

1                   IN THE UNITED STATES DISTRICT COURT FOR THE  
2                   EASTERN DISTRICT OF VIRGINIA  
3                   Alexandria Division

4                   UNITED STATES OF AMERICA,

5                   Plaintiff,

6                   VS.

7                   JOSE LOPEZ TORRES, ALVIN GAITAN  
8                   BENITEZ, CHRISTIAN LEMUS CERNA,  
9                   OMAR DEJESUS CASTILLO, DOUGLAS  
10                  DURAN CERRITOS, MANUEL ERNESTO  
11                  PAIZ GUEVARA, and JESUS ALEJANDRO  
12                  CHAVEZ,

13                  Defendants.

14                  Crim. No. 1:14cr306

15                  April 11, 2016

16                  JURY TRIAL

17                  BEFORE:       THE HONORABLE GERALD BRUCE LEE  
18                  UNITED STATES DISTRICT JUDGE

19                  APPEARANCES:

20                  FOR GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE  
21                  BY: JULIA MARTINEZ, AUSA  
22                  TOBIAS TOBLER, AUSA

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24                  OFFICIAL COURT REPORTER:

25                  RENECIA A. SMITH-WILSON, RMR, CRR  
U.S. District Court  
401 Courthouse Square, 5th Floor  
Alexandria, VA 22314  
(703)501-1580

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# PROCEEDINGS

(Thereupon, the following was heard in open court at 10:03 a.m.)

(Jury not present.)

6 THE CLERK: 1:14 criminal 306, United States  
7 versus Jose Lopez Torres, Alvin Gaitan Benitez,  
8 Christian Lemus Cerna, Omar Dejesus Castillo, Douglas  
9 Duran Cerritos, Manuel Ernesto Paiz Guevara, and Jesus  
10 Alejandro Chavez.

11                   Excuse me, with Spanish interpreters, six  
12 previously sworn.

13 THE COURT: All right. Good morning,  
14 everyone.

15 Ready to bring the jury out?

## PRELIMINARY MATTERS

17 MS. MARTINEZ: Your Honor, before we bring  
18 the jury out, we request permission to distribute the  
19 transcript binders for the jurors, under the juror  
20 chairs. We wanted to address that with you on the  
21 record before doing so.

THE COURT: Okay. You can do that.

23 MS. MARTINEZ: We can do that right now?

24 | THE COURT: Yes.

25 MS. MARTINEZ: Thank you, Your Honor.

1 (Pause.)

2 MR. ZIMMERMAN: Your Honor.

3 THE COURT: Yes.

4 MR. ZIMMERMAN: Just -- Jeffrey Zimmerman  
5 for Mr. Gaitan Benitez.

6 I had a discussion with Ms. Martinez at the  
7 end of last week. Just for the record, my understanding  
8 is that the word "verbatim" has been taken off of every  
9 single transcript, not simply the ones that we had gone  
10 over at the time that argument was made, but, that she  
11 had -- the government had agreed to do that, and that  
12 has been done.

13 THE COURT: That's my understanding. And  
14 the transcripts I have, the replacement transcripts all  
15 say "Transcript." They don't say "verbatim."

16 MR. ZIMMERMAN: Thank you, Judge.

17 THE COURT: Ready to bring the jury out?

18 MS. MARTINEZ: Yes, Your Honor.

19 THE COURT: All right.

20 You can bring the jurors out, Mr. Toliver.

21 Thank you.

22 (Jury present at 10:05 a.m.)

23 THE COURT: You may be seated.

24 Good morning, ladies and gentlemen.

25 THE JURORS: Good morning.

1 THE COURT: Good morning, Mr. Manuel Ernesto  
2 Paiz Guevara.

3 Good morning, Mr. Christian Lemus Cerna.

4 Good morning, Mr. Omar Dejesus Castillo.

5 Good morning, Ms. Jesus Alejandro Chavez.

6 Good morning, Mr. Alvin Gaitan Benitez.

7 Good morning, Mr. Douglas Duran Cerritos.

8 And good morning, Mr. Jose Lopez Torres.

9 Counsel ready to proceed?

10 MS. MARTINEZ: Yes, Your Honor.

11 THE COURT: All right.

12 MS. MARTINEZ: The government calls Brenda  
13 Born.

14 THE CLERK: Please raise your right hand.

15 (Witness sworn.)

16 THE WITNESS: Yes, I do.

17 THEREUPON, BRENDA K. BORN, having been duly  
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. MARTINEZ:

21 Q. Good morning.

22 A. Good morning.

23 Q. Would you please state and spell your full name  
24 for the record.

25 A. Yes. My name is Brenda K. Born, B- -- as in

1 boy -- -o-r-n.

2 Q. Where are you employed?

3 A. I am a supervisory special agent with the Federal  
4 Bureau of Investigation.

5 Q. How long have you worked for the FBI?

6 A. Since October of 2015.

7 Q. How long have you been a supervisory special  
8 agent?

9 A. Since September of 2014.

10 Q. What position did you have before September of  
11 2015 (sic)?

12 A. I was a special agent at the Washington Field  
13 Office, violence crimes against children squad.

14 Q. Are you acquainted with an individual who goes by  
15 the nickname Junior?

16 A. Yes, I am.

17 Q. How do you know Junior?

18 A. I was his case handling agent.

19 Q. What is Junior's relationship with the FBI?

20 A. He is a confidential human source.

21 Q. What is a confidential human source?

22 A. A confidential human source is an individual that  
23 the FBI recruits and operates to obtain intelligence,  
24 intelligence associated to advance investigative  
25 priorities, or intelligence associated with FBI national

1 intelligence requirements.

2 Q. You said you were his handling agent?

3 A. Correct.

4 Q. What is that?

5 A. That's his main point of contact for the FBI.

6 Q. How long were you his handling agent?

7 A. From approximately October of 2009 until I went  
8 to the cyber division in September of 2014.

9 Q. Prior to becoming his handling agent, had you any  
10 contact or experience with him?

11 A. Yes, I did.

12 Q. What -- in what manner?

13 A. His original case handling agent, I assisted him  
14 with some gang operations that involved Junior, and so I  
15 had contact with him prior.

16 Q. Based on your experience with him, both before  
17 and during the time that you were his handling agent,  
18 are you familiar with his history with the FBI as a  
19 confidential human source?

20 A. Yes, I am.

21 Q. How long has Junior been an FBI confidential  
22 human source?

23 A. Since approximately November of 2005.

24 Q. Briefly, what kinds of cases has he assisted the  
25 FBI with?

1 A. He has --

2 MR. CONTE: Objection on relevance grounds.

3 MS. MARTINEZ: Your Honor, this is --

4 MR. CONTE: Bolstering, also, Your Honor.

5 MS. MARTINEZ: This is foundational. What  
6 kinds of cases is hardly bolstering.

7 THE COURT: All right. Let's focus just on  
8 this case. Objection sustained.

9 BY MS. MARTINEZ:

10 Q. Are you familiar with the nature of this case?

11 A. Yes, I am.

12 Q. Are you familiar with Junior's involvement in  
13 this case?

14 A. Yes, I am.

15 Q. Generally speaking, what procedures are in place  
16 for an FBI CHS like Junior?

17 A. We administer admonishments on a yearly basis.  
18 There's database checks, criminal history checks. And  
19 we are also required to interact with them on a minimum  
20 of at least once every 90 days.

21 Q. What do you mean by interact a minimum of every  
22 90 days?

23 A. Reach out and have contact with them.

24 Q. For what purpose?

25 A. Just to engage with them, since they're a

1 confidential human source. Do they have any updates?  
2 Have they moved? If they're involved in any tasking,  
3 have they provided any information, have they been able  
4 to conduct the task.

5 Q. When you were Junior's handling agent, what type  
6 of contact would you have with him?

7 What form did that contact take place?

8 A. We would meet face to face. Junior also had my  
9 desk number that he could call. He also had my  
10 FBI-issued cellphone number that he could call. And he  
11 also had my FBI e-mail address. And we engaged in all  
12 those methods of communication.

13 Q. When Junior provided information to you, as his  
14 handling agent, what procedures did you follow?

15 A. Depending on the information that he would  
16 provide -- there's a couple types of information. It  
17 can be administrative or it can be substantive.

18 If it was administrative, for example, a new  
19 e-mail address or change of employment or moved, then I  
20 would update the CHS case file to reflect those  
21 administrative changes.

22 If it was substantive, an investigative related,  
23 then I would update the case file, his confidential  
24 human source case file, but then also update and  
25 associate that information with the investigative case

1 file.

2 Q. You mentioned something about yearly  
3 admonishments. Can you explain that to the jury?

4 A. Every CHS gets admonished every year. We go  
5 through -- there's a series of questions that you inform  
6 the confidential human source, questions like: Their  
7 participation is voluntary. The information they  
8 provide has to be truthful. We cannot guarantee any  
9 rewards or payments, cannot guarantee any immigration  
10 benefits.

11 And then, depending on if they're associated with  
12 unions or other employment, then there's separate  
13 questions that you ask. And that's done on a yearly  
14 basis.

15 Q. Does the FBI pay confidential human sources?

16 A. Yes, we do.

17 Q. For what?

18 A. We pay them for services, as well as  
19 reimbursement for expenses incurred.

20 Q. What do you mean, "expenses incurred"?

21 A. For example, if I were to ask a source to go out  
22 and purchase a prepaid phone card to give to a subject,  
23 they would incur an expense to get that prepaid phone  
24 card. They would provide me a receipt and we would  
25 reimburse them for the expenses.

1 Q. What do you mean by "services"?

2 A. Services, if they participated in an event for us  
3 or provided valuable intelligence, then we have the  
4 opportunity to pay them for those types of activities.

5 Q. What sort of approval, if any, is necessary to  
6 pay an FBI confidential human source for services?

7 A. You request the payment, and then depending on  
8 the amounts of the payments, there's different  
9 thresholds that require higher-up approvals, depending  
10 on the amounts of it.

11 Q. Who requests the payment?

12 A. The case handling agent requests it.

13 Q. What procedures, if any, are followed when a  
14 confidential human source is given a payment?

15 A. Well, when you do give them the payment -- you  
16 get the payment, and then once you do give them the  
17 payment, you have them sign that they did receive the  
18 payment. That is witnessed by another agent or task  
19 force officer, and then that gets reconciled back into  
20 their case file.

21 Q. Has Junior been paid during the course of his  
22 11 years as an FBI confidential human source?

23 A. Yes, he has.

24 Q. Has he been reimbursed for expenses?

25 A. Yes, he has.

1 Q. Has he also been paid for services?

2 A. Yes, he has.

3 Q. Do you know approximately how much he has been  
4 paid, total, expenses and services, over his history  
5 with the FBI as a confidential human source?

6 A. I believe it's approximately \$30,000.

7 Q. Do you know how much he has been paid  
8 specifically for services, over the 11 years as a  
9 confidential human source?

10 A. For services, I'm not sure exactly for services.

11 Q. Has he received any immigration benefits as a  
12 result of his work for the FBI?

13 A. Yes, he has.

14 Q. Can you elaborate?

15 A. He has received significant benefit of parole,  
16 deferred action. And, then I was working on an S Visa  
17 application request, but I did not submit that prior to  
18 leaving the Washington Field Office. I handed that off  
19 to the violent gang squad.

20 Q. Now, you stated that you're familiar with the  
21 work that Junior did on this case.

22 A. Correct.

23 Q. Are you aware of the general nature of this case?

24 A. Yes, I am.

25 Q. What is that?

1 A. It's a case involving MS-13 gang members.

2 Q. Do you personally have any specialty in gang  
3 investigations?

4 A. No, I do not.

5 Q. Is a confidential human source permitted to  
6 perform illegal acts when he is working as a  
7 confidential human source for the FBI?

8 A. Only if you get proper authorization.

9 Q. What does that mean?

10 A. We have a process called "otherwise illegal  
11 activity" that allows the FBI to obtain approval to  
12 conduct an illegal act.

13 Q. What kinds of illegal acts were authorized, if  
14 any, for Junior, during the course of this  
15 investigation?

16 A. He had authorization to discuss and be involved  
17 in MS-13 gang activities, to include drugs,  
18 prostitution, purchasing of weapons, and wiring of  
19 funds.

20 Q. Are you aware of how it was that he was able to  
21 engage in gang activity, how he had that access?

22 A. His previous association with the gang.

23 Q. In addition to general gang activities, were  
24 there any specific legal activities that were authorized  
25 during the course of this investigation?

1       A. He had authority to obtain a weapon. He had  
2 authority for consensual monitoring. He had authority  
3 for a consensual wire.

4       Q. Let's talk first about the weapon. What do you  
5 mean by that?

6       A. He purchased a weapon from an -- I can't remember  
7 if the individual was a MS-13 gang associate or an  
8 actual gang member. I'm not -- not exactly sure on  
9 that.

10      Q. Was the authority for that activity obtained  
11 before or after the purchase of the weapon?

12      A. Prior to the purchase of the weapon.

13      Q. Why is it done prior to the purchase?

14      A. We request authority by executive management at  
15 your local field office, that -- inform them this is  
16 what we would like to do, the illegal act, and get the  
17 authorization to conduct the illegal act.

18           And then prior to conducting the illegal act, we  
19 admonish the individual that will actually be performing  
20 the illegal act, to let them know what authorizations  
21 they actually have. And it's for a limited period of  
22 time.

23      Q. What's the purpose of those procedures?

24      A. Just admonishment, so they know that they are  
25 only allowed to engage in a specific illegal act, that

1 it's not an open-ended, you can conduct any illegal  
2 activity; it's for a specific purpose.

3 Q. What sort of activity, if any -- illegal  
4 activity, was Junior not permitted to engage in during  
5 the course of this investigation?

6 A. He was not authorized to engage in anything  
7 involving bodily harm. He was not authorized to engage  
8 in providing drugs to anybody.

9 Q. Are you aware of any instances in which he  
10 violated the admonishment not to engage in any sort of  
11 acts of violence?

12 A. Yes. He did on one instance bring a joint to a  
13 meet.

14 Q. Just to be clear, my question said "acts of  
15 violence."

16 A. Oh.

17 Q. Was he individually involved in acts of violence?

18 A. No, he did not. I apologize.

19 Q. Okay. Let's clarify about the joint. Tell the  
20 jury what you're talking about.

21 A. On May 15th, in 2014, we were conducting an  
22 operation involving Junior, where Junior was going to be  
23 meeting with Leopard, and Leopard was going to be  
24 showing Junior the possible locations of where two  
25 individuals were buried.

1           And upon arrival, Junior informed me that he had  
2 brought a joint to the meet. And he did not have  
3 authorization to bring or provide that joint.

4       Q. What did you do when he informed you that he had  
5 this joint?

6       A. I tried to obtain verbal emergency authorization  
7 to allow him to conduct that activity. I contacted  
8 multiple executives at the Washington Field Office, but  
9 I was unable to reach anybody. So he was not allowed to  
10 conduct that activity.

11      Q. Do you remember the date of that incident?

12      A. It was May 15th of 2014.

13      Q. What was the -- what was going on on that date,  
14 when he arrived with the joint?

15      A. He was meeting with Leopard, and Leopard was  
16 going to show him where they buried two bodies.

17      Q. Going back for a moment to the authorization  
18 involving the firearm that Junior was involved in, after  
19 the purchase of the firearm, what procedures were  
20 followed?

21      A. Um, upon purchase, then once Junior obtained the  
22 weapon, we met Junior at a secured location, and then  
23 the FBI took possession of the firearm.

24      Q. Now, you mentioned the firearm. You also  
25 mentioned consensual monitoring. What is consensual

1 monitoring?

2 A. Consensual monitoring is where the individuals  
3 allow the FBI to record their conversations. The  
4 recordings can be audio and/or video.

5 Q. When you say "audio or video," can you elaborate?

6 A. Audio could just be involving telephonic  
7 communications. Video could be where we're actually  
8 video recording and audio at the same time, the meet  
9 with the individual.

10 Q. For what purposes did the FBI approval consensual  
11 monitoring for Junior during this investigation?

12 A. For the purpose of gaining intelligence and the  
13 actual conversations between Junior and the individuals  
14 that he was interacting with.

15 Q. You also mentioned something called a wire. Can  
16 you tell the jury what that is?

17 A. That is where -- for the wires, where we, with  
18 the proper authorization, go up on an actual telephone  
19 and we record the actual conversations on the telephone.  
20 It could be any text messages or any actual telephonic  
21 communications.

22 Q. All right. In this instance, what phone was the  
23 wire on?

24 A. This was an FBI phone that we had provided to  
25 Junior.

1 Q. When a wire is on a phone, are all of the calls  
2 recorded?

3 A. Yes, on that phone.

4 Q. Are all of the text messages recorded on that  
5 phone?

6 A. Yes.

7 Q. In addition to actually recording the  
8 conversations, the phone calls themselves, is there  
9 other information about the calls that's collected by  
10 the wire?

11 A. Date and time, the telephone number.

12 Q. When did the consensual wire for Junior begin?

13 A. That began in approximately the end of October of  
14 2013.

15 Q. What precipitated the decision to put the  
16 consensual wire in place?

17 A. At the beginning of October, I think it was  
18 approximately October 9th, Junior had contacted me and  
19 informed me that he --

20 MR. CONTE: Objection, Your Honor. That's  
21 hearsay.

22 THE COURT: Sustained.

23 BY MS. MARTINEZ:

24 Q. Without stating what Junior said, generally  
25 speaking, what precipitated the decision to put the wire

1       in place?

2       A. A conversation Junior had told me he had had.

3       Q. With who?

4       A. With Payaso.

5       Q. Now, going back to -- you mentioned that there  
6 may be consensual recordings of video for meetings.

7       What's -- what procedures are put in place when a  
8 confidential human source like Junior is recording a  
9 meeting with another individual?

10      A. We -- prior to the meet, we would, in a secured  
11 location, would meet up with Junior, and we would have  
12 him fill out the appropriate paperwork to conduct the  
13 consensual monitoring.

14           We would then, using FBI technology, we would  
15 place the equipment somewhere on Junior to record the  
16 meet.

17           And then afterwards we would, again at a secure  
18 location, meet up with Junior and then obtain the  
19 equipment.

20           And then that equipment then would be, depending  
21 on what it was, proper procedures followed to obtain the  
22 data off of the equipment.

23       Q. Now, earlier when you mentioned the marijuana  
24 joint that Junior wasn't supposed to have, you said the  
25 date was May 15, 2014. Were you involved in an

1 operation with Junior on May 15, 2014?

2 A. Yes, I was, for part of it. I wasn't there for  
3 the whole thing, but for part of it, yes, I was.

4 Q. And was there a body wire used during that  
5 operation?

6 A. Yes, there was.

7 Q. And were -- you said you weren't there for the  
8 entire time. Were you there at the beginning, the  
9 middle or the end?

10 A. The beginning.

11 Q. Were procedures followed at the beginning?

12 A. Yes, they were.

13 Q. All right. Now, circling back one more time to  
14 the questions about whether Junior was allowed to --  
15 permit to engage in certain activity, illegal activity  
16 or others, you stated -- and correct me if I'm wrong --  
17 that he was not allowed to engage in any violent  
18 activity.

19 A. That's correct.

20 Q. To your knowledge, did he ever violate that rule  
21 of the FBI?

22 A. To my knowledge, no, he did not.

23 MS. MARTINEZ: No further questions, Your  
24 Honor.

25 MR. AMOLSCHE: Your Honor, Christopher

1 Amolsch for Mr. Cerna. May we approach, Judge?

2 THE COURT: Yes.

3 (Thereupon, the following side-bar  
4 conference was had:)

5 MR. AMOLSCH: Thank you, Your Honor. Chris  
6 Amolsch for Mr. Cerna.

7 In the government's allocution with this  
8 Junior regarding -- with the witness regarding the  
9 telephone conversations and why she was meeting with  
10 Junior, her testimony was that she met with Junior to  
11 discuss with Leopardo, who is Mr. Cerna, the burial of  
12 the bodies.

13 She didn't say "reburial." She said  
14 "burial." She said "bodies," relating to Trujillo and  
15 Aguilar.

16 The only way he could have been part of the  
17 burial of Mr. Trujillo was if he participated in the  
18 murder.

19 I understand the Court's order regarding the  
20 government is allowed to elicit testimony that 15 days  
21 greater, or thereabouts, Mr. Cerna went and dug up the  
22 body of Mr. Trujillo and reburied it.

23 I understand the Court's order, that it's  
24 not permissible, given the Court's order regarding any  
25 evidence that Mr. Cerna participated in the murder of

1 Trujillo.

2           But in this case, she did say burial of the  
3 two bodies which is not reburial. And the only way he  
4 could have been part of the burial is if he participated  
5 in the murder.

6           I'll remind the Court at this point, the  
7 government's evidence is that there's only about five or  
8 six people in this gang at this point. We heard the  
9 testimony about the recruiting process and that it was  
10 going slow.

11           The government is going to present evidence  
12 that, who was there at the murder, which -- I assume  
13 which included Mr. Cerna, homeboy one and homeboy two.  
14 There is only five of them, Judge.

15           The government had an opportunity to meet  
16 with this witness and talk about the limitations on the  
17 Court's order regarding evidence that he participated in  
18 the murder.

19           I believe they violated that, Judge. This  
20 isn't about the reburial 15 days later. This is about  
21 the burial after the murder.

22           I ask for a mistrial, Judge, or at least an  
23 instruction to the jury regarding that. Because that's  
24 outside what the Court has allowed the government to  
25 bring.

1 MS. MARTINEZ: May I respond, Your Honor?

2 THE COURT: Sure.

3 MS. MARTINEZ: Your Honor, I heard the  
4 witness say the burial locations of the bodies. But  
5 even if Mr. Amolsch is correct, and she said the burial  
6 of the bodies, when his client dug up moved the body and  
7 then buried it in a new location, he did, in fact, bury  
8 the body.

9 I don't think the jury is going to play  
10 anything into reburial versus burial. There were no  
11 further details elicited from this witness.

12 And, as the government's case will prove,  
13 the body of Lagrima was, in fact, found in the second  
14 location, the location where Mr. Amolsch's client buried  
15 him, albeit the second time -- which the jury won't hear  
16 about the first time. But he did, in fact, bury the  
17 victim in the location in which it was found.

18 The purpose of this operation, that this  
19 witness testified about, was so that Mr. Amolsch's  
20 client could show Junior where the bodies were located.  
21 The body of Lagrima was located in the second location,  
22 where, in fact, Mr. Amolsch's client did bury him.  
23 There's no grounds for mistrial.

24 MR. AMOLSCHE: Judge, I would say we  
25 understand the Court's ruling on the reburial. We note

1 our objection to that. But that's not what she said.  
2 She said -- the witness said, where the two bodies were  
3 buried.

4                 This is the -- I understand, Judge, you  
5 know, there's some nuance here, but given how few  
6 members there are of this clique at this time, the  
7 government's insistence on using the instructions,  
8 homeboy one and homeboy two, who I assume is Del Cid or  
9 whoever else is going to testify to, and now the FBI  
10 agent's testimony about their taking him to where the  
11 bodies were buried, it is impossible for them not to  
12 conclude -- because they can count to six -- who is on  
13 trial here and who was -- must have been present at the  
14 burial. Again, Judge, this is in violation of what we  
15 talked about. This is inadmissible evidence regarding  
16 the murder of Trujillo.

17                 And I would ask for a mistrial, Judge, or we  
18 need some sort of instruction at the very minimum  
19 regarding what they are allowed to consider this  
20 evidence for.

21                 THE COURT: All right. I don't see it the  
22 way you see it. I appreciate your bringing it to my  
23 attention. This witness is not going to be the main  
24 witness on what happened. It's going to be Junior.  
25 You'll have a chance to cross-examine.

1                   And I don't think that she's made any  
2 judgment about who was involved in the murder by using  
3 the word "burial." The bodies were buried.  
4 Theoretically, the word "bury" means in the past,  
5 doesn't mean presently.

6 And, also, we're talking about a person who  
7 is on the site where two bodies were buried. So I don't  
8 think there's anything violating the rules. I don't  
9 think there's any grounds for mistrial. So motion will  
10 be denied.

11 | Thank you.

14 THE COURT: You may proceed.

15 MR. LEIVA: Thank you.

## CROSS-EXAMINATION

17 | BY MR. LEIVA:

18 Q. Good morning, Agent Born.

19 A. Good morning.

Q. Agent Born, you've been Junior's handler for about five years; is that correct?

22 Or you were his handler for about five years?

A. That is correct.

24 Q. And when you first started using Junior -- and  
25 I'm going to use the term "confidential informant" or

1 "confidential human source" interchangeably, if that's  
2 okay with you.

3 When you first started using Junior as a  
4 confidential informant, was he in MS-13?

5 A. At the time I -- I think he still was, yes.

6 Q. Okay. And, do you recall what, if any, rank he  
7 had achieved when you first started working with Junior  
8 back in 2009?

9 A. I think at that point he was just one of the  
10 members, if I remember correctly.

11 Q. Just a regular homeboy?

12 A. I think so, yes.

13 Q. Okay. And I understand that you said that you  
14 were not a specialist when it came to MS-13, but you  
15 know enough about them, right, working with Junior?

16 A. From him, yes.

17 Q. Okay. And, you know that one rises in position  
18 or rank based on deeds that they do on behalf of MS-13.

19 A. Correct.

20 Q. Okay. So, you start working with him in 2009.  
21 I'm assuming that when you started working with him, you  
22 did not advise him to leave the gang.

23 A. That is correct.

24 Q. Right?

25 Would it be fair to say that you instructed him

1 to stay in the gang?

2 A. I wouldn't say that I instructed him to stay in  
3 the gang. I allowed him to continue the activities that  
4 he was currently doing --

5 Q. All right.

6 A. -- with the proper approvals.

7 Q. And, when you did that, you, of course,  
8 understood that he would have to commit criminal acts in  
9 order to gain rank and move up in the gang.

10 A. I don't know what acts were needed to move up,  
11 but I do understand that you do move up in the ranks of  
12 a gang.

13 Q. All right. And did you and Junior have a  
14 discussion about that?

15 Well, let me go back.

16 I'm assuming that when you recruited Junior as an  
17 asset, you envisioned that he would be working for you  
18 or for the Federal Bureau of Investigation for -- for  
19 some time?

20 A. I wasn't involved in his original recruitment  
21 back in 2005.

22 Q. But, once you got involved, would it be fair to  
23 say that you knew that he would be working for the  
24 Bureau for some time?

25 A. Yes.

1 Q. Okay.

2 A. Yes.

3 Q. So, this wasn't an asset that you were just going  
4 to use in 2009 and just get rid of afterwards; you  
5 needed him in there, right?

6 A. Correct.

7 Q. Okay. All right. So, going back to three  
8 questions before that one, so you -- it would be fair to  
9 say that you knew that he would be committing criminal  
10 acts in the future --

11 A. Well, I don't --

12 Q. -- on behalf of the gang?

13 A. -- know that he was going to be committing  
14 criminal acts in the future. And at the time that I did  
15 take over Junior, he was also assisting with other types  
16 of investigations besides gang.

17 Q. So, no one -- you were never privy to a  
18 conversation where there was a discussion with Junior  
19 that, "Listen. We know you're involved in this gang.  
20 We know this gang commits criminal offenses. We know  
21 you're going to be put in a position where you,  
22 yourself, have to commit criminal offenses." You were  
23 never privy to a discussion like that with Junior?

24 A. I know we had discussed gang activities and stuff  
25 that's involved with gangs. But the criminal activity,

1 I know that we had talked about there were some drugs  
2 and prostitution stuff and some weapons that he had  
3 knowledge of. I do remember those conversations.

4 Q. All right. So, those conversations that you do  
5 recall, do you remember being -- or Junior being told,  
6 "As long as you tell us ahead of time that you're going  
7 to commit these criminal offenses, you'll be okay, you  
8 won't be charged with anything"?

9 A. I don't remember telling him anything like that.

10 Q. What, if any, conversation was there with Junior  
11 that would lead him to believe that it was okay for him  
12 to participate in criminal activity and not be punished  
13 for it?

14 A. I'm sorry. Can you repeat that?

15 Q. What, if any, conversation did you, or were you  
16 present with your colleagues, where Junior was told that  
17 he would not get in trouble for any criminal activity  
18 that he did while he was this asset for you guys?

19 A. I was never involved in anything to tell him that  
20 he would not be in trouble for committing --

21 Q. Do you know --

22 A. -- crimes.

23 Q. -- of any reason why Junior would believe that he  
24 would not get in trouble, as long as he was working as  
25 an asset for the Federal Bureau of Investigation?

1       A. I do not know of anything as to why he would  
2 believe that.

3       Q. Okay. Now, you testified that he has been given  
4 a parole or deferment action, right?

5       A. There was a significant benefit of parole and a  
6 deferred action. And then I had started another process  
7 that I did not complete.

8       Q. By "parole and deferred action," that means that  
9 the U.S. Government has told Junior they're not going to  
10 deport him back to El Salvador.

11      A. The significant benefit of parole was to allow  
12 him to legally remain here to work on an investigation  
13 for a limited period of time.

14           And then the deferred action allowed us to have  
15 him remain here legally. So that was for anybody who  
16 was going through deportation or removal proceedings,  
17 for a limited period of time.

18       Q. And he was also told that you guys would try to  
19 get him an S Visa, right?

20      A. He knew that I was working on the application,  
21 but he also knew that there was no guarantees. Because  
22 S Visas, there is a limited number of applications that  
23 are allowed.

24       Q. I understand that you used the word "guarantee,"  
25 okay? And I understand that you are never in a position

1 where you can guarantee someone --

2 A. Right.

3 Q. -- something, okay?

4       But you guys made it abundantly clear that you  
5 would lobby for Junior to get this special S Visa.

6       A. He knew that I was filling out the application,  
7 yes. But he also knew the limitation on the number and  
8 that it was not an FBI decision.

9       Q. I understand that.

10      A. Uh-huh.

11      Q. Okay? But correct me if I'm wrong: When you  
12 have a conversation with someone like Junior --

13      A. Yes.

14      Q. -- you say to him, "Junior, we can't guarantee  
15 you this visa, but we're going to do everything we can  
16 to see if we can get you one."

17      A. I didn't use those particular words, but yes, he  
18 knew that --

19      Q. But something --

20      A. -- I was working on it.

21      Q. -- similar to it?

22      A. Yes.

23      Q. Yes.

24           Because, otherwise, who --

25      A. Yes.

1 Q. -- would put their life in danger, if all you  
2 guys said was, "Hey, come work for us, but we're not  
3 going to guarantee you anything," right?

4 It would be hard to recruit people that way,  
5 wouldn't it?

6 A. He did know I was working on that application,  
7 and that if it was denied that there were other means  
8 that the FBI could follow to try and get an S Visa for  
9 him.

10 Q. And this S Visa, as we -- it's commonly referred  
11 to as a snitch visa, right?

12 A. That, I -- it's an S Visa.

13 Q. Well, it's an S Visa, and he would be allowed to  
14 remain here in this country legally, right, if he  
15 obtained that S Visa?

16 A. For a limited period of time --

17 Q. All right.

18 A. -- and then --

19 Q. And so -- and so would his family.

20 A. If you get the visa -- if he had family members  
21 that required it, there are processes to get those.

22 Q. What about his family members; what, if any,  
23 benefit are they receiving?

24 Are they receiving any parole or deferred action?

25 A. Not that I'm aware of.

1       Q. So, am I to understand correctly, for the last  
2 five -- or for the five years that you were handling  
3 Junior, you met with him once every 90 days?

4       A. You're required to meet with him once every  
5 90 days.

6       Q. That's a minimum --

7       A. Correct.

8       Q. -- right?

9                   So you met him more than once every 90 days?

10      A. If it warranted, yes.

11      Q. Okay. And every time that you met with Junior,  
12 can I assume that he told you, yes, he was still in  
13 MS-13?

14      A. We didn't always have those types of  
15 conversations, no.

16      Q. Well, wasn't that the reason why he was working  
17 for you guys, is to gather information, intel, about  
18 MS-13?

19      A. That was not the sole reason, no, for me. As his  
20 handling agent, he was working other violations and  
21 providing intel.

22      Q. Other violations, you mean narcotics?

23      A. No.

24      Q. What other violations are you referring to?

25      A. Violent crimes against children.

1 Q. Okay. All right. And, so, what you're saying is  
2 that Junior had -- well, let me go back.

3 So, Junior had this MS-13 part of him that you  
4 guys would work on him, but not all those five years,  
5 right?

6 A. Correct.

7 Q. And then you had the crimes against children, he  
8 also had information or contacts with, that had nothing  
9 to do with MS-13?

10 A. Correct.

11 Q. Okay. So, let's focus on 2013.

12 A. Okay.

13 Q. All right. At that point, did you receive  
14 information that Junior did obtain a rank higher than  
15 just a homeboy?

16 A. In 2013, I don't think he had achieved the rank  
17 higher yet. I don't think that was in 2013. I would  
18 have to go back to the case file to look, but I don't  
19 think it was 2013 yet.

20 Q. So, your testimony is that he was still a homeboy  
21 back in 2013?

22 A. I -- I don't know what level it was, but I don't  
23 think he had achieved the one higher, that I thought was  
24 in 2014.

25 Q. Well, you were monitoring him during 2013, were

1 you not?

2 A. Yes I was.

3 Q. Okay. And were you made aware that he was  
4 meeting with leaders of other cliques?

5 A. Yes.

6 Q. Okay. And, given your limited knowledge of  
7 MS-13, did you know that a homeboy can't be present when  
8 it's a leadership meeting? Did you know that much?

9 A. No, I do not.

10 Q. You didn't.

11 A. Uh-huh.

12 Q. Did he tell you, or did anyone tell you, that he  
13 had achieved the rank of a leadership role in MS-13, and  
14 that's why he was being invited to these leadership  
15 meetings?

16 A. Not in 2013. I don't recall that.

17 Q. What about 2014?

18 A. I thought it was 2014 where he had achieved the  
19 leadership.

20 Q. Okay. And, what position of leadership did he  
21 obtain?

22 Was he first word?

23 Was he the -- the -- are you familiar with that  
24 term, "first word"?

25 A. No.

1 Q. All right. So, you've been working with Junior  
2 for five years, and you've never heard the term  
3 "first word"?

4 A. I've heard the term "first word," but I believe  
5 he was, I believe, a clique leader, but I don't know if  
6 that means the same as first word.

7 Q. Okay. What does a clique leader means to you?

8 A. That he had kind of oversight and -- of the --  
9 that particular clique.

10 Q. And do you know what, if any, term is given to a  
11 person that has that kind of oversight over a clique?

12 A. Clique leader.

13 Q. Okay. So, that's -- you know -- you don't know  
14 it as a first word or the *palavreado* or the *corredor*?

15 No?

16 A. I have heard "first word." I don't know if  
17 that's equivalent to it.

18 Q. Okay. And you believe he made first word status,  
19 or the leader -- I'm sorry -- the leader of the clique  
20 sometime in 2014?

21 A. I believe that he did, yes, in approximately  
22 2014.

23 Q. And, did you bother to ask him how is it that he  
24 obtained the leadership role of a clique?

25 A. No. I know there had been conversations that he

1 had with individuals, and that -- I thought it was  
2 requested that he become the clique leader and take over  
3 that role because of -- I can't remember exactly what  
4 happened to the previous clique leader.

5 Q. As his handler, were you not concerned that  
6 Junior had to commit some serious criminal offenses in  
7 order to obtain that position of clique leader?

8 A. I was not aware at the time that he needed to  
9 conduct any serious crimes at that time. I know from my  
10 experience with him, was that he needed to have kind of  
11 oversight of members, be involved in conversations and  
12 attend meetings, whether they were clique meetings or  
13 general MS-13 meetings.

14 Q. Did you ask him how is it that he obtained this  
15 status of clique leader?

16 A. No, I did not.

17 Q. You just -- to you, it wasn't important --

18 A. No, I know --

19 Q. -- how he came about --

20 A. -- at that --

21 Q. -- achieving such a -- such a status as clique  
22 leader?

23 A. At that point in time, the telephone that he was  
24 using to do all the communications, we were recording  
25 it, and I had direct connections with the MS-13 gang --

1       the violent gang squad out of the Washington Field  
2       Office, and they were involved in the investigation as  
3       well.

4           So, as the information came up I would provide it  
5       to them, and then they would offer their expertise and  
6       guidance in terms of what activities were important for  
7       us to be involved in.

8       Q. And I believe you testified on direct that Junior  
9       got approval for you to engage in narcotics activity and  
10       prostitution activity?

11      A. It was activities involving the MS-13 gang  
12       activities, was the -- was the otherwise illegal  
13       activity --

14      Q. But you --

15      A. -- approval that he had.

16      Q. -- certainly referenced narcotics and  
17       prostitution.

18      A. There was drugs, prostitution, others.

19      Q. And when did he seek permission from you or any  
20       other member of your agency to engage in -- in that kind  
21       of conduct, the narcotics and prostitution?

22      A. When did we do that?

23      Q. Yes. Was it in 2013, 2014? When was it?

24      A. I think it was both.

25      Q. Okay.

1       A. And then it's for a limited period of time. So  
2 we would -- we would need to renew it.

3       Q. And, when he told you that he was engaged in  
4 prostitution, did he tell you that he was actually  
5 coordinating --

6       A. No, he did not.

7       Q. -- the possible transfer of people to work as  
8 prostitutes?

9       A. No, he did not.

10      Q. All right. What about the narcotics; did he tell  
11 you that he was setting up deals?

12      A. No, he did not.

13           He had told me he had information about deals,  
14 but not anything where he was setting up deals.

15      Q. So, in other words, then, he just comes up to you  
16 and said, "Hey, I just have information about deals."

17           And you guys say, "Okay. You got permission to  
18 engage in narcotics."

19           Is it that simple?

20      A. No, it's -- no, it's not that simple.

21      Q. No, it is. Because he told you that he was  
22 involved with a guy name Smiley, right?

23      A. Smiley sounds familiar, but I don't -- I don't  
24 remember what --

25      Q. You don't recall --

1 A. -- you're talking about.

2 Q. -- being told that Smiley was the narcotics guy  
3 for MS-13, and that Junior was partnering up with him?

4 A. No, I do not recall that.

5 The name -- I do recognize the name Smiley, but I  
6 would have to refresh my memory on the case file to see  
7 what Junior's involvement was with Smiley.

8 Q. You also testified that he sought permission from  
9 you to buy a weapon, right?

10 A. Correct.

11 Q. Okay. And, did he tell you why he needed a  
12 weapon?

13 A. He was -- he had the opportunity -- an MS-13  
14 individual -- I don't remember his name -- was selling a  
15 weapon, and we did not want that weapon to be sold to  
16 somebody else. We wanted it to be a controlled buy.  
17 So, we got the authorization to have Junior make the  
18 purchase.

19 Q. You also testified that as far as your  
20 recollection goes, your knowledge, Junior was never  
21 involved in acts of violence.

22 A. Correct.

23 Q. All right.

24 A. To my knowledge, he has not been.

25 Q. Do you recall Junior being at a meeting at a

1 restaurant with other MS-13 members?

2 A. He attended different meetings at restaurants.

3 I'm not exactly sure which one you're talking --

4 Q. All right.

5 A. -- you're referencing.

6 Q. Do you recall the meeting where he claimed that a  
7 homeboy pulled a knife on him?

8 A. I vaguely remember that.

9 Q. Okay. And do you recall that at that meeting,  
10 Junior told the other homeboys that this guy needed to  
11 receive a beating for pulling a knife out on him?

12 A. I do not remember that or recall that.

13 Q. You don't recall that?

14 A. No, I do not, sir.

15 Q. You don't recall observing that, as Junior was  
16 leaving the restaurant, some other homeboys took the  
17 homeboy around the corner, who pulled the knife out on  
18 Junior, and gave him a beat down?

19 A. No, I do not recall that.

20 Q. So, sometime in 2014, Junior is the leader of a  
21 clique. Did he tell you which clique he was running?

22 A. I believe it was the Silvas.

23 Q. Okay. And, the Silvas is one of the bigger  
24 cliques in the area?

25 A. I'm not sure.

1 Q. You're not sure?

2 A. No, I'm not.

3 Q. You don't ask him these kinds of questions?

4 A. No, I do not.

5 Q. And, did he tell you what, if anything, he had  
6 planned for the clique as far as what direction he was  
7 going to take it, or take them?

8 A. No, he did not.

9 Q. Whether he was going to focus more on narcotics,  
10 prostitution, violence, any of that?

11 A. No, we did not have a discussion like that.

12 Q. And, did he tell you that as a leader of the  
13 clique, everything had to go through him?

14 A. I believe that was true, that stuff did need to  
15 go through the clique leader.

16 Q. All right. And that he would be the one that  
17 would make the decisions for this particular clique?

18 A. Yes, I believe that is true.

19 Q. And, was there a meeting that he would not be  
20 prosecuted -- was there any discussion that he would not  
21 be prosecuted for any decision he made as leader of the  
22 clique?

23 A. No, there was no discussions like that.

24 Q. Did you give him any instructions at all, what he  
25 could or could not do as the leader of this clique?

1       A. Oh, he had -- the only thing we had discussed was  
2 his otherwise illegal activity approval, that allowed  
3 him to be -- to have discussions and be involved in the  
4 gang activities, and that in no instance was he allowed  
5 to participate in any violence.

6       Q. Do you recall a meeting that occurred here in  
7 Northern Virginia on September 15, 2013, at a hotel  
8 room, where Junior was present?

9       A. I don't recall that one.

10      Q. You don't recall on that date, that there was a  
11 meeting of all the leaders of the local clique and this  
12 drug guy named Smiley?

13      A. I don't recall. I would have to look back into  
14 the case file to refresh my memory.

15      Q. Well, you guys have video surveillance of it. Do  
16 you recall having video surveillance in these hotel  
17 rooms -- or in the particular hotel room?

18      A. I don't recall if we utilized that equipment that  
19 day or not. I would have to look into the case file.

20      Q. Well, did you read your case file before you came  
21 here and testified today?

22      A. I did not read all of it. I do not have access  
23 to the system any more since I switched positions.

24      Q. So, when is the last time that you read the case  
25 file about this case, or Junior's role in this case?

1 A. The entire case file?

2 I have my notes of stuff that I read related to  
3 the murders, but I have not looked at everything since I  
4 left back in September 2014.

5 Q. Okay. So, it's been about more than a year and a  
6 half, then?

7 A. Correct.

8 MR. LEIVA: That's all the questions I have.  
9 Thank you, Agent Born.

10 THE WITNESS: Yes, sir.

11 CROSS-EXAMINATION

12 BY MS. AUSTIN:

13 Q. Good morning, Agent Born.

14 A. Good morning, ma'am.

15 Q. My name is Amy Austin and --

16 (Noise interruption.)

17 MS. AUSTIN: Excuse me. This just broke, I  
18 think.

19 THE COURT: Is it broken?

20 MS. AUSTIN: Well, it just fell down on the  
21 podium.

22 Okay. I think I fixed it. I'm sorry.

23 Q. Good morning.

24 A. Good morning, ma'am.

25 Q. I represent Mr. Alvin Gaitan Benitez, and I have

1 a few more questions for you this morning.

2 I believe you testified that you put a wiretap on  
3 Junior's phone. When did you say that -- that happened?

4 A. That was approximately the end of October 2013.

5 Q. And so, prior to that, were you recording any of  
6 his phone calls?

7 A. We had done some consensual recordings prior to  
8 that.

9 Q. But, there was not a recording of every phone  
10 call he had?

11 A. No, there was not a recording of every phone call  
12 he had.

13 Q. And did you testify that you provided him with a  
14 cellphone?

15 A. The FBI did, yes.

16 Q. And --

17 A. But -- I apologize. I wasn't the one that  
18 actually had done the paperwork to get it.

19 Q. Okay. And, so when he communicated with you, he  
20 used the cellphone; is that correct?

21 A. He used his personal phone when he communicated  
22 with me.

23 Q. Not the FBI cellphone?

24 A. No.

25 Q. So, he had more than one cellphone?

1 A. Correct.

2 Q. And, when the wiretap was put in place, it was on  
3 the FBI cellphone; is that correct?

4 A. Correct.

5 Q. And so, any phone call he made on his personal  
6 cellphone would not have been included in that wiretap;  
7 is that correct?

8 A. Correct.

9 Q. You stated that you communicated with him -- he  
10 called your office phone, your cellphone, and e-mail; is  
11 that correct?

12 A. Correct.

13 Q. Did he text you?

14 A. Yes.

15 Q. Did he text you from his personal phone or the  
16 FBI phone?

17 A. I believe the majority of it was his personal  
18 phone. He may have once or twice on the FBI phone to do  
19 a test, to make sure it was working, but the majority of  
20 it was his personal phone.

21 Q. And, did you text him back?

22 A. Yes.

23 Q. And, did you e-mail with him?

24 A. Yes.

25 Q. Did you ever go into his home and search it

1 during the time that you were working as his handler?

2 A. No, I did not.

3 Q. And, you didn't know whether he had two or three  
4 other cellphones, in addition to the two you were aware  
5 of, do you?

6 A. Correct.

7 Q. And you certainly didn't have 24-hour  
8 surveillance on Junior, did you?

9 A. No.

10 Q. The consensual recorded phone calls that you  
11 talked about before the wiretap was put in place, would  
12 those be recorded because Junior alerted you that he  
13 wanted to record a phone call or think you should record  
14 a phone call?

15 A. Those would have been, he was providing some  
16 information, and then the investigation that was  
17 associated with the case agents made the call that it  
18 would be beneficial to regard those, if he was going to  
19 be having those types of conversations.

20 Q. So, before the wiretap, what sort of recording of  
21 phone conversations occurred -- conversations that  
22 Junior had with other members of the MS-13.

23 A. Correct.

24 Q. No, I'm asking you.

25 A. Oh, I'm sorry.

1 Q. What sort of recordings were made?

2 How did that work?

3 A. There was -- if he attended any meetings, then  
4 there would be a recording.

5 Q. Well, okay. A recording -- a video recording or  
6 audio recording; is --

7 A. For the meetings, I don't remember if it was both  
8 audio and video for those, or if it was just audio. I'd  
9 have to look back in --

10 Q. Would he make that recording on a phone?

11 A. No. We would have the FBI specialized equipment  
12 for the meetings.

13 Q. Okay. So, let me concentrate on telephone  
14 calls --

15 A. Okay.

16 Q. -- before the wiretap was put in place in late  
17 October 2013.

18 A. Yes.

19 Q. Were -- were there any phone calls he had with  
20 MS-13 members that were recorded?

21 A. I believe so, yes. I think -- if he had them on  
22 that phone when we had the consensual, then they would  
23 have been recorded.

24 Q. You say "when we had the consensual." Is that a  
25 matter of Junior hitting a record button when he's

1 having a phone call, or are agents involved in that?

2 A. I believe in some instances early on, we actually  
3 gave him equipment where he had to initiate the  
4 recording of it. But then I think we changed and it  
5 went to where we were up on his phone.

6 Q. When you say "we were up on his phone" --

7 A. The FBI -- I apologize -- the FBI had done a  
8 consensual on his personal phone.

9 Q. Okay. "Had done a consensual"; is that a wiretap  
10 where everything is recorded?

11 A. Yes.

12 Q. Okay. So, prior to the wiretap where everything  
13 was recorded on the FBI cellphone, were you aware of  
14 Junior recording phone conversations prior to that  
15 wiretap?

16 A. Yes.

17 Q. And, it was up to him which phone calls to record  
18 or not to record; is that correct?

19 A. In -- when he was utilizing the specific devices  
20 where we were not up totally on the phone where  
21 everything was recorded, then he was the person making  
22 the decision on what to record and what not to record.

23 Q. Isn't it true, prior to the wiretap in late  
24 October 2013, that if Junior had communication with an  
25 MS-13 member on any topic, the only way you would know

1 about it is if he informed you?

2 A. Correct. Unless -- I apologize. Unless it was a  
3 time where we were doing the recordings.

4 Q. But, you weren't doing those until late October,  
5 correct?

6 A. On the FBI phone, correct.

7 Q. Okay. So, prior to that --

8 A. Correct. He would notify me when he was having  
9 conversations.

10 Q. And it was -- let's talk about once he did notify  
11 you of a conversation he had with an MS-13 member.

12 Would he call you and tell you he had this conversation,  
13 or would he text you and let you know this information?

14 A. Both.

15 Q. Okay. And, once you received that information,  
16 if it -- let's say it was a telephone call, and you took  
17 the information from him through a conversation, did you  
18 simultaneously log that in, take notes of everything he  
19 was telling you?

20 A. Yes.

21 Q. And, how would you do that?

22 A. I would then summarize my telephone call or my  
23 telephone conversation with him in an e-mail, and I  
24 would provide that information to my contacts on the  
25 Washington Field Office gang squad, and I would provide

1       that information to them, and then it would also be  
2       entered into his confidential human source case file.

3           Q. And if he texted you information, would you just  
4       forward that text to the other agents involved?

5           A. I wouldn't forward the text, no, but I would copy  
6       the information and summarize it in an e-mail and send  
7       it via e-mail to them, and then, again, enter it into  
8       his case file, his confidential human source case file.

9           Q. Now, you state that you gave -- the FBI gave  
10      permission to Junior to engage in -- and your testimony  
11      was, be involved in prostitution and narcotics?

12          A. His otherwise illegal activity was for him to  
13       discuss and be involved in MS-13 gang activities, to  
14       include drugs, prostitution, there was the purchase of a  
15       weapon, and then wiring of funds.

16          Q. So, he was told that he was -- in addition to  
17       being allowed to discuss gang activities, he could be  
18       involved in gang activities?

19          A. It would -- he was allowed to discuss, go to  
20       meets, and then if there was ever any type of activity  
21       that his presence was requested or he thought it would  
22       be important for him to attend, then, I would -- we  
23       would have the discussion with the -- the gang  
24       investigators to see if that was some type of activity  
25       we would want him to be involved with.

1 Q. And, you would know of those activities only if  
2 Junior told you about them, correct?

3 A. Correct.

4 Q. And, you would seek approval of those activities  
5 that Junior had asked you approval for, correct?

6 A. Correct.

7 Q. And, he was not -- you did not have surveillance  
8 on him.

9 A. No.

10 And, then, if it was after the consensual  
11 wiretap, then, obviously, if it had been discussed on  
12 the -- via telephone conversation, on that wire, then,  
13 individuals doing the translation would have documented  
14 it as well.

15 Q. But, they wouldn't have heard any conversations  
16 he had on his personal cellphone, would they?

17 A. Correct.

18 MS. AUSTIN: I have no further questions,  
19 Your Honor. Thank you.

20 MR. CONTE: Your Honor, may we approach?

21 THE COURT: Yes.

22 (Thereupon, the following side-bar  
23 conference was had:)

24 MR. CONTE: I'm waiting for my entourage.

25 Your Honor, I think I had a Rule 16 on the

1 Jencks, we were entitled to the text messages between  
2 Junior and this agents.

3 MS. MARTINEZ: They've been provided, Your  
4 Honor.

5 MR. CONTE: I'm looking.

6 What format?

7 MS. MARTINEZ: The source file that you had,  
8 the verbatim -- the source file, and you've been  
9 provided with them.

10 MR. CONTE: Source file, what? You mean the  
11 302s?

12 MS. MARTINEZ: No, I mean the source reports  
13 of which you have the huge number.

14 Your Honor, we have been very conscientious  
15 about this issue. They have been provided.

16 MR. CONTE: I have -- obviously, I'm in the  
17 case late. I don't recall seeing them.

18 MS. AUSTIN: Are you talking about the  
19 Brenda Born e-mails?

20 MS. MARTINEZ: There are e-mails from  
21 Brenda, what she -- what she -- writes verbatim what  
22 text messages are.

23 There are also source reports, which are in  
24 the binder at your table, that go on for many, many,  
25 many, many pages, in which she types in exactly what was

1 said.

2 MR. CONTE: I have those 302s.

3 MS. MARTINEZ: That's the way -- they're not  
4 302s. The way the text messages were preserved were  
5 typing verbatim. That's the way they're preserved.

6 And they were provided to you through the  
7 source file, which is the FBI's policy, the way that  
8 they document these communications.

9 MR. LEIVA: In the e-mail -- because there  
10 is e-mails by Agent Born. The only text messages we  
11 received from -- were to Junior, which were Spanish.

12 MS. MARTINEZ: With respect to  
13 communications between Junior and Special Agent Born,  
14 there are two sources for that. One are the e-mails,  
15 which clearly they are aware of, which also have  
16 included verbatim text messages in the e-mails.

17 So, as she just testified what she would do,  
18 they would put the information in the e-mail. That was  
19 the first thing she did. Then, following FBI procedure,  
20 she documents everything in his source file. They are  
21 source reports.

22 They're not 302s, but they're source  
23 reports, sometimes one at a time -- I can see defense  
24 counsel nodding with familiarity about these --  
25 sometimes they go on, an entire month of reports.

1 They're in the binder sitting on your desk.

2 And they've been identified by us as  
3 relating to Junior. They say simply "CHS." They don't  
4 identify who the CHS is, but we identify by letter.  
5 Those are source reports related to Junior.

6 MR. CONTE: We have no guarantee that all  
7 the text messages were in the source reports.

8 THE COURT: Why don't you look at what's  
9 there?

10 MR. CONTE: Judge, I can't say what's not  
11 there if I don't know.

12 THE COURT: Well, it sounds like you haven't  
13 looked at them.

14 MR. CONTE: I looked at them. Some of those  
15 records are in there. But I don't know that all the  
16 texts this agent got from Junior are in those reports.  
17 I have no way of knowing that, unless --

18 THE COURT: Have you looked at them,  
19 Mr. Conte?

20 MR. CONTE: Yes, I have.

21 THE COURT: Why did you ask where the text  
22 messages are, if you looked at them, you know the text  
23 messages are in the binder?

24 MR. CONTE: I would think they would be  
25 preserved in some other format than the source report.

1                   THE COURT: Did you hear what the witness  
2 said?

3                   She typed them into e-mails. Are you -- I'm  
4 not sure what you want me to do. What do you want me to  
5 do?

6                   MR. CONTE: If the government has a database  
7 of text messages from this agent's phone, I think it  
8 should be produced.

9                   MS. MARTINEZ: We don't, Your Honor. What  
10 we have is what was produced, which is the text  
11 messages.

12                  THE COURT: All right.

13                  I think you have what you're entitled to.  
14 You're entitled to cross-examine this witness, and you  
15 will have your chance.

16                  Thank you very much. Motion denied.

17                  (Thereupon, the side-bar conference was  
18 concluded.)

19                  THE COURT: You may proceed, Counsel.

20                   CROSS-EXAMINATION

21                  BY MR. AQUINO:

22                  Q. Ms. Born, good morning. My name is Jerry Aquino.  
23 Along with Elita Amato, we represent Jesus Chavez.

24                  A. Good morning, sir.

25                  Q. Just a few questions for you.

1           Correct me if I'm wrong, but Junior, for example,  
2 could go to CVS -- just get in the car and you would not  
3 know about it, correct?

4           A. That is correct.

5           Q. And there were periods of time, as long as a  
6 week, when you did not have communication with Junior.

7           A. There were periods where I did not, yes, that is  
8 correct.

9           Q. Is it possible that it was more than a week?

10          A. There are some times, yes.

11          Q. Okay. Now, during those period of times, he was  
12 not supposed to engage in -- harm people; is that  
13 correct?

14          A. He was never authorized to engage in any harmful  
15 activities with others.

16          Q. And insofar as drug sales that were concerned, he  
17 was only allowed to engage in narcotics sales when you  
18 gave permission; is that accurate?

19          A. That would be accurate, yes.

20          Q. Okay. So, you would agree that there were period  
21 of times when you had no idea what he was doing,  
22 correct?

23          A. Yes. I did not monitor him 24/7.

24          Q. Okay. And during that period of time, for  
25 example -- or there was a period of time when he rose

1 from just a soldier or homeboy to clique leader,  
2 correct?

3 A. That is true, correct.

4 Q. And he could have engaged in crimes of violence  
5 as well as narcotics sales that you had no idea about,  
6 correct?

7 A. To the best of my knowledge, he has never engaged  
8 in those activities.

9 Q. Well, that was not the question I asked. He  
10 could have engaged in those acts and you would have no  
11 idea, correct?

12 A. That is correct.

13 Q. Now, there was some discussion of an S Visa,  
14 correct?

15 A. Correct.

16 Q. And, that is a nonimmigrant visa; is that  
17 accurate?

18 A. Um, I'm not an expert on our visas. I know it's  
19 the one that's a limited period of time, and somebody  
20 has provided information to the government.

21 Q. Okay. Was there further discussions, beyond the  
22 question of an S Visa, concerning his allowed -- to be  
23 allowed to stay in the United States permanently?

24 A. There -- I'm sorry. What was that?

25 Q. Sure. Did you have any discussions with Junior

1       that might make a short-term period of time to stay in  
2       the United States a longer period of time, that is,  
3       something on a permanent bases?

4       A. The only discussions I had with him was, I had  
5       done the deferred action to allow him to stay here, and  
6       that's for a specific period of time. And then I was  
7       working on the S Visa with it.

8       Q. And can you give us a sense of how long you  
9       expected the S Visa to last?

10      A. The S -- from my understanding of how S Visas  
11     work -- and that's assuming he would have been approved  
12     for it, because my other understanding is that there's a  
13     limited that are allowed to even be issued -- is that  
14     it's three years, and then after three years they may be  
15     eligible for a legal permanent resident.

16      Q. Okay. And legal permanent resident means he  
17     could stay here for the rest of his life, assuming he  
18     did not engage in some type of criminal behavior,  
19     correct?

20      A. Whatever their requirements are, yes. I believe  
21     that's pretty accurate.

22      Q. And that was the goal; is that accurate?

23      A. Yes, I did. My intentions were to get him an  
24     S Visa prior to leaving.

25      Q. But, my point is, is that there were discussions

1 in which he could stay here as a permanent resident,  
2 correct?

3 A. If we got the -- there were -- there were some  
4 things that would obviously have to take place; one,  
5 that the S Visa would get approved, and I had no  
6 guarantees that that would even be approved for the FBI.  
7 And then, his -- obviously, his behavior in that three  
8 years, there were specific guidelines that -- like you  
9 said, if there were criminal acts created, then they  
10 would not be allowed. And then they have to go through  
11 the legal permanent resident process.

12           Q. Okay. Assuming you knew about his criminal  
13 behavior, correct?

14 A. Correct.

15           Q. Okay. And again, there were periods of time  
16 where you had no idea what he was doing, correct?

17 A. Correct.

18 MR. AQUINO: That's all the questions I  
19 have.

## CROSS-EXAMINATION

21 BY MR. CONTE:

22           Q. Good morning, Agent Born. My name is Joseph  
23 Conte. Mr. Dwight Crawley and myself represent Douglas  
24 Duran Cerritos.

25 A. Good morning, sir.

1       Q. I want to talk to you about the SMS, the text  
2 messages, and the e-mails that you received from Junior.  
3 Did every contact that you had with Junior go into the  
4 source file?

5       A. Yes, sir.

6       Q. All right. And, is there a permanent record  
7 otherwise kept of any text message or SMS message or  
8 e-mail message that's received by you or sent by you to  
9 a source?

10      A. No. Those are -- we have limited space in our  
11 system, so I would clear my inbox out.

12      Q. And, there's no backup?

13      A. I -- I'd have to defer to our computer experts.  
14 Not that I'm aware of.

15      Q. All right. And, besides your desk phone and your  
16 cellphone and your e-mail, did he ever communicate with  
17 you in any other method?

18      A. Face to face.

19      Q. All right. And, was each one of those documented  
20 in the source file?

21      A. Yes, they were, sir.

22      Q. All right. And the text messages, were they put  
23 verbatim into the source file?

24      A. Into the source file, I don't think so. I think  
25 I summarized what he was saying to me.

1 Q. So, if he sent you a text or an e-mail, you would  
2 only summarize it for the source file; is that correct?

3 A. I believe I summarized -- I think some of them I  
4 did do verbatim if I wasn't exactly sure what he was  
5 saying. But I think I did both, actually.

6 MR. CONTE: All right. I have nothing  
7 further, Your Honor. Thank you.

8 CROSS-EXAMINATION

9 BY MS. RALLS:

10 Q. Good morning, Agent Born. My name --

11 A. Good morning.

12 Q. -- is Meredith Ralls, and I represent Omar  
13 Dejesus Castillo.

14 A. Good morning, ma'am.

15 Q. I wanted to talk a little bit about the benefits  
16 that you had discussed that Junior received. With the  
17 parole or deferred action, is it your understanding that  
18 Junior would receive a work authorization with that?

19 A. Yes.

20 Q. And, he would receive a Social Security number as  
21 part of that?

22 A. I don't know if you get a Social Security number  
23 for that. But, we did request the work authorization  
24 when we requested those types of benefits.

25 Q. And when -- you talked about some of the payments

1       that Junior received. Were those given to him in cash  
2 or check?

3       A. Cash.

4       Q. And, to the best of your recollection, did he  
5 receive at least one payment in each year that you were  
6 working with him?

7       A. That, I'm not sure of, if he did in every year or  
8 not.

9       Q. And, Junior wasn't allowed to engage in criminal  
10 activity without your prior authorization; is that  
11 correct?

12      A. Correct.

13      Q. So, was he allowed to run a brothel?

14      A. No, he was not.

15      Q. Was he allowed to collect rent from a brothel,  
16 like cash payments from a brothel that someone else was  
17 running?

18      A. I thought there was one instance where he did --  
19 we did get authorization for him to collect rent.

20      Q. Was that authorization for a specific period of  
21 time or just for one instance?

22      A. For one instance.

23      Q. Do you remember where that brothel was located?

24      A. If I remember correctly, I thought somewhere in  
25 Maryland.

1 Q. Did he ever receive authorization to conduct --  
2 when I say "rent," I'm talking about extortion from that  
3 brothel.

4 A. Correct.

5 Q. Okay. So, to your knowledge, he received one  
6 authorization to extort a brothel in Maryland?

7 A. I believe. And I'd have to confirm in my notes,  
8 but -- in the paperwork that was done for that  
9 operation. But I thought he was meeting somebody and he  
10 was -- the price and everything had already been  
11 discussed, and he was going there to assist in the  
12 collection of it.

13 Q. Do you remember the approximate time period that  
14 that was?

15 A. I don't remember.

16 Q. Was he ever allowed to authorize attacks on other  
17 gang members?

18 A. No, he was not authorized to do that.

19 Q. Did you ever ask if he had committed criminal  
20 acts outside of your authorization?

21 A. No, I never asked that specific question.

22 Q. But, it's very important to you that he not  
23 commit criminal activity without your authorization;  
24 isn't that correct?

25 A. Correct.

1 Q. But even though that's very important to you, you  
2 didn't ask him if he had been doing that, correct?

3 A. That is correct.

4 Q. Now, you referenced one incident where Junior was  
5 found to have been possessing marijuana. To the best of  
6 your knowledge, was he ever charged with possession of  
7 marijuana for -- in a criminal case?

8 A. For that particular instance, or --

9 Q. For that instance.

10 A. No, he was not.

11 Q. Is Junior the only confidential human source that  
12 you worked with during your tenure in that position?

13 A. In the position of --

14 Q. Of being a source handler.

15 A. No. I've worked with other sources.

16 Q. All right. Approximately how many?

17 A. Over the years, or --

18 Q. Sure.

19 A. Maybe a dozen or so.

20 Q. And --

21 A. Approximately.

22 Q. Okay. And, you know that confidential human  
23 sources are not always truthful to you, correct?

24 A. That is correct.

25 But just -- I'm sorry. Just to clarify, Junior

1 was my only source of operative that was gang  
2 associated.

3 Q. Okay. And, Junior was checking in with you by  
4 text; isn't that correct?

5 A. It was sometimes face to face, telephone calls,  
6 whether it was at my desk, on my phone, e-mail and text  
7 messages, yes.

8 Q. To the best of your knowledge, he was also  
9 checking in with other FBI agents; is that correct?

10 A. To my knowledge, he was not.

11 Q. Okay. So, you wouldn't know if he was also  
12 checking in with Special Agent Fernando Uribe?

13 A. Not unless somebody else informed me.

14 MS. RALLS: Thank you.

15 THE WITNESS: You're welcome.

16 CROSS-EXAMINATION

17 BY MR. SALVATO:

18 Q. Good morning, Agent. My name is Frank Salvato  
19 and I represent Christian Lemus Cerna.

20 A. Good morning, sir.

21 Q. This gentleman, Junior, has been a source with  
22 the FBI from 2005 until the present time; is that  
23 correct?

24 A. That is correct.

25 Q. And, during this time period, he's been told --

1 he's been paid a total of about \$44,000; is that right?

2 A. Um, I thought it was approximately 30,000.

3 Q. Is it -- \$30,000 was for his services, and he has  
4 also received close to \$14,000 in expenses; is that  
5 correct?

6 A. Okay. That could be correct.

7 Q. Okay. And, also, he's had -- other family  
8 members have received money; is that true?

9 A. I did not provide anything for other family  
10 members. Unless that happened after my -- I had left  
11 the Washington Field Office.

12 Q. And, is it your testimony that all the  
13 information provided by Junior has been truthful?

14 A. I'm sorry. What was that?

15 Q. Has he ever lied to you?

16 A. I'm not aware of him ever lying to me.

17 Q. Has he ever lied to any agent within the FBI?

18 A. I'm not aware of him -- (pause) --

19 Q. Has he ever lied in court, to a federal court?

20 A. I am not aware of -- of him ever lying in court.

21 Q. And, he's received all of these payments,  
22 approximately \$44,000 or so, in cash; is that correct?

23 A. That would be correct.

24 Q. And --

25 A. At least, I can speak for sure for the times that

1 I paid him, that it was all in -- all in cash.

2 Q. And, is he paid per transaction, per piece of  
3 information?

4 How is his pay scale?

5 A. There's no such thing as a pay scale. It's up to  
6 the case handling agent on conducting the payments with  
7 it.

8 For certain things for Junior, if it was  
9 expenses, I wouldn't always do the paperwork to pay  
10 right away. I might let a month or so go and then give  
11 him the sum to cover multiple expenses he incurred.

12 And the same thing with the services: it would  
13 just depend on the information provided and --  
14 (pause) --

15 Q. Okay. Is there a range of payment for the  
16 services?

17 A. There are different thresholds in terms of  
18 getting approvals to make the payments. But, that is  
19 the life of a source. We have, like, ranges, if it's  
20 from zero to, for example, a hundred thousand, then this  
21 executive can make the approval.

22 If it's going go a hundred thousand to 200, then  
23 a higher level executive approves the threshold with it.  
24 But it always goes through your field office, the  
25 executive in your local field office, to give the

1 approval for the payment.

2 Q. It's fair to say the more information, the more  
3 you get paid, true?

4 A. Well, it depends on the information.

5 Q. Well, if you --

6 A. If the information is valuable, then, it does  
7 warrant. You have to justify your payments with it.  
8 You can't just go out and say, "I have this source. I  
9 want to pay them."

10 Q. Well --

11 A. You have to have a reason and justification.

12 Q. But the -- and I appreciate that information.

13 But the payment scale depends on what you feel is  
14 the importance of the information, true?

15 A. Correct.

16 Q. And, Junior is here illegally, true?

17 A. I would have to -- I'm not sure if his deferred  
18 action had gone through prior to leaving, as well as the  
19 status of the S Visa. I'm not exactly sure on that.

20 Q. Before his deferred action -- because I'm going  
21 to ask you about that -- but before his deferred action,  
22 he is here illegally, true?

23 A. He -- I had done deferred actions for him, so he  
24 was here legally.

25 Q. Prior to your filing deferred actions for him, he

1 was illegal, true?

2 A. That, I'm not sure. By the time I was operating  
3 him, he was here legally. I don't know prior to my  
4 operating him.

5 Q. You're saying he's here legally because the FBI  
6 filed deferred actions for him, true?

7 A. Correct.

8 Q. Right. So, prior to that time period he was here  
9 illegally, true?

10 A. He must have been.

11 Q. Or there would be --

12 A. No deferred --

13 Q. -- no need for a deferred action, true?

14 A. Right.

15 Q. All right. And the FBI or the United States  
16 Attorney's Office hasn't tried to deport him, correct?

17 A. I thought he was in some deportation proceedings  
18 in Fairfax County.

19 Q. When was that?

20 A. I'm not exactly sure. It was right around, I  
21 think, the time that I was going through my transition  
22 over to headquarters. I know he was having court  
23 appointments in Fairfax County for his --

24 Q. So, that would be Two Thousand- --

25 A. Fourteen.

1       Q. So, in 2014, it's your testimony that he was  
2 going through some type of deportation proceedings?

3       A. I know he was going through some type of legal  
4 proceedings with Fairfax County. I thought it was  
5 Fairfax County.

6       Q. Legal proceedings with regard to his immigration,  
7 or criminal proceedings?

8       A. I thought it was related to his immigration  
9 proceedings.

10      Q. All right. But he was under a deferred action  
11 situation, correct?

12      A. Correct.

13      Q. In fact, the FBI, every year since 2005, has  
14 filed a deferred action, significant public benefit,  
15 parole each year, correct?

16      A. Correct.

17           And I had --

18      Q. And that's renewable each year --

19      A. Correct.

20      Q. -- is that right?

21      A. Correct.

22           And I had submitted one prior to leaving, but as  
23 soon as I left, it had not quite been approved yet. So,  
24 I know there was a period of time that it was in  
25 transition from when the paperwork was submitted, and

1 I'm not exactly sure then, because I was no longer in  
2 the Washington Field Office --

3 Q. You haven't followed --

4 A. -- when that got --

5 Q. You haven't followed up --

6 A. I --

7 Q. -- to see whether he got the deferred action?

8 A. I was no longer his case handling agent.

9 Q. Do you have any knowledge that the deferred  
10 action was granted?

11 A. I have not asked that question.

12 Q. I mean, he's still here in --

13 A. Yes.

14 Q. -- in the community, correct?

15 A. Correct. Uh-huh.

16 Q. And these deferred actions, is this what's called  
17 a U Visa?

18 A. I don't know anything about a U Visa.

19 Q. These deferred actions, that's something that you  
20 prepared while you were handling him?

21 A. Correct.

22 Q. Okay. So, there would be a statement from you  
23 indicating that you wanted this individual kept under a  
24 deferred action, true?

25 A. Correct.

1 Q. And, how many of those statements did you fill  
2 out -- and did you sign these?

3 A. Yes, I believe I am a signature on it.

4 Q. Okay. And how many of these did you prepare?

5 A. I think approximately three or four of them.

6 Q. Okay. And each year they were granted?

7 A. Yes -- well, except for the last one I had done  
8 prior to leaving. I'm not -- I'm not sure of the status  
9 of that one.

10 Q. And, now, you are assisting him -- or had  
11 assisted him in trying to get an S Visa; is that  
12 correct?

13 A. I had created the paperwork, correct.

14 Q. And, again, that's something that you would  
15 prepare and you would sign off on?

16 A. I don't think I am an S Visa signature. I think  
17 that's higher up in the field office. I'd have to go  
18 back and look at the paperwork.

19 Q. So, you would prepare the S Visa and then  
20 somebody else would sign off on it?

21 A. Correct. There's just levels of management  
22 within your local field office, as well as the U.S.  
23 Attorney's Office, that sign off on the S Visa  
24 application.

25 Q. And, Agent, I believe it was your testimony that

1 Junior moved up from homeboy to clique leader in 2013;  
2 is that correct?

3 A. I thought it was 2014.

4 Q. Okay. 2014.

5 And -- but, I think what you're telling the jury  
6 is that you have no idea what criminal act he committed  
7 to make that move. Is that what you're telling us?

8 A. I do not believe he committed any criminal act,  
9 not to my knowledge.

10 Q. So, he was able to move up from homeboy to clique  
11 leader without any criminal act; is that what you're  
12 saying?

13 A. To my knowledge.

14 Q. Ma'am, isn't it true that individuals within  
15 MS-13 move up through acts of violence?

16 A. I'm not exactly sure how members move up.

17 Q. And, you have no knowledge of Junior committing  
18 any criminal offense, other than this possession of  
19 marijuana?

20 A. Just the ones that we authorized him to engage  
21 in, as well.

22 Q. Collection of rents from a brothel?

23 A. I believe that was one that we authorized.

24 Q. How much money did he receive based upon that?

25 A. I don't remember, sir.

1 Q. How much money did he extort?

2 A. To my knowledge, he wasn't the one that had done  
3 the extortion. I thought that transaction had already  
4 been set up, and he was just assisting somebody in the  
5 collection.

6 Q. How much was collected?

7 A. I don't remember, sir.

8 Q. You only have direct contact with him about every  
9 90 days; is that fair to say?

10 A. Well, that's the requirement, is at a minimum of  
11 90 days. During --

12 Q. There's some --

13 A. I'm sorry.

14 Q. There's some time periods where, obviously, you  
15 don't have any contact with him, correct?

16 A. There were some time periods that I did not, that  
17 is correct.

18 Q. And you're relying on him to be truthful when he  
19 speaks to you about what's going on in his life, true?

20 A. That is correct.

21 Q. This operation that you talked about involving  
22 Leonardo, fair to say that Junior knew that this was  
23 going to be recorded, true?

24 A. Correct, yes, he did know. He had to consent to  
25 it.

1 Q. And, he also knew that this was going to be  
2 videotaped in some regard, true?

3 A. I'm not exactly sure if he knew that the device  
4 we were using was both audio and video. I think he did,  
5 yes, on that one.

6 Q. So, he knew that the FBI was watching, correct?

7 A. Correct.

8 Q. All right. And, even while the FBI is watching,  
9 he still broke the law and possessed marijuana, true?

10 A. At the time that he showed up with the marijuana,  
11 He was not being recorded.

12 Q. During the operation he possessed marijuana,  
13 correct?

14 A. No, not during the operation. When he arrived --  
15 when he arrived at our meet to --

16 Q. So, Junior is meeting with the FBI --

17 A. Correct.

18 Q. -- knowing that the FBI is going to be there and  
19 observe the operation, and he is breaking the law, true?

20 A. Correct.

21 Q. Did that give you any concern, that when he  
22 wasn't being watched he was out committing crimes of  
23 violence?

24 A. No, it did not.

25 Q. What was the penalty for his breaking the law

1           that day while you guys were watching?

2           A. We removed the -- we took the joint from him,  
3 and -- because I could not get authorization for him,  
4 and that was disposed.

5           Q. So, removing the -- removing the marijuana was  
6 his penalty?

7           A. And then, there's other procedures we go through  
8 when we have unauthorized illegal activity, and I  
9 followed those processes.

10          Q. Was his deferred action visa taken from him?

11          A. No, it was not.

12          Q. Okay. Was his application for an S Visa  
13 infringed or slowed down in any way?

14          A. No, it was not.

15          Q. All right. So, the only real penalty was that  
16 you took away the illegal narcotic, true?

17          A. Correct.

18          Q. Ma'am, did you have any knowledge that Junior had  
19 committed a robbery during the time period that you were  
20 working with him?

21          A. No, I did not.

22          Q. Did you have any idea that he committed a robbery  
23 of rings, chains and jewelry?

24          A. No, I'm not aware of any of that.

25          Q. Did he ever tell you about anything like that?

1 A. No, he did not.

2 Q. Did he ever tell you that he threatened, during  
3 this robbery, to cut somebody's finger off?

4 A. No, I never heard any of that.

5 Q. And that the victim was crying and begging for  
6 his finger not to be cut off?

7 A. I did not hear any of that.

8 Q. Did he ever tell you that he had -- to my client,  
9 Leopard, as you've identified him, that he, Junior,  
10 wanted to kill another person?

11 A. I'm not aware of any of that.

12 Q. Nothing like that?

13 A. No.

14 Q. Are you aware that Junior told my client, during  
15 this operation, that he wanted to kill another person  
16 and bury that person?

17 A. I'm not aware of any of that, to the best of my  
18 memory, no. I don't remember that.

19 Q. Nothing like that?

20 A. No, sir.

21 Q. When you gave Junior these admonishments before  
22 an operation like that, are you asking him to ask  
23 questions in a certain way of the person that he's  
24 dealing with?

25 A. No.

1 Q. All right. Do you ask him to ask open-ended  
2 questions or --

3 A. No, I do not.

4 Q. -- something like that?

5 A. No, sir.

6 MR. SALVATO: That's all the questions I  
7 have, Your Honor. Thank you.

8 CROSS-EXAMINATION

9 BY MR. CHICK:

10 Q. Good morning, Agent Born. How are you?

11 A. Good morning, sir.

12 Q. My name is Mike Chick. I'm the attorney for  
13 Mr. Manuel Ernesto Paiz Guevara.

14 A. Yes, sir.

15 Q. So, you said that -- that Junior had started  
16 working since 2005, right?

17 A. Correct.

18 Q. But, you -- you weren't working with him during  
19 that initial period?

20 A. I assisted on some operations where he was a part  
21 of it, but I had -- I was not his case handling agent  
22 during that timeframe.

23 Q. Okay. And then -- but in 2009 you started  
24 working with him, and that was on cases other than this  
25 case, right?

1 A. Correct.

2 Q. Okay. And, then at some point, you started -- he  
3 started working with you on this particular case?

4 A. Correct.

5 Q. Okay. And, then, so you're -- and it sounds like  
6 from your direct testimony and some of the  
7 cross-examination that you're familiar -- familiar with  
8 this case?

9 A. I am, yes. But I don't have, you know, intricate  
10 details -- know the intricate details of this  
11 investigation.

12 Q. Okay. Do you give him specific assignments for  
13 this case?

14 A. For this one, I did not give him specific  
15 assignments. He would have his conversations and report  
16 to me the conversations, and let me know what types of  
17 activities that were being requested.

18 And then, in consulting with the violent gang  
19 squad, would determine which ones we would want him to  
20 participate in.

21 Q. So, what about conversations -- you said telling  
22 him to have conversations with people. Do you say,  
23 "Hey, you know, go have a conversation with" this person  
24 or that person, or "have a call with" so and so?

25 A. No, I would not.

1 Q. Okay. He just -- he just sort of does that based  
2 on his understanding of who's -- who are the people to  
3 talk to?

4 A. Correct.

5 Q. Okay. And, you guys trust his knowledge of who  
6 are the important people to talk to?

7 A. Correct.

8 Q. Okay. And, as -- as his handler, you're familiar  
9 with the people he's talking to, right?

10 A. The names would sound familiar, yes.

11 Q. Okay. Um -- and you've referred to some of the  
12 names here today already. You referred to the name  
13 Leonardo.

14 A. Correct.

15 Q. You referred to Payaso.

16 A. Correct.

17 Q. And he talked with a bunch of other people whose  
18 names you would remember, too, right?

19 A. Yes.

20 Q. Could I just get you a little bit more --

21 A. Oh, I'm sorry.

22 Q. -- in the microphone.

23 A. Yes, sir.

24 Q. Just so it helps her out a little bit, and  
25 everybody.

1           So, let me ask you about the name Solitario. Do  
2 you remember him talking over the phone with anybody  
3 named Solitario?

4       A. That name does sound familiar.

5       Q. Okay. What specifically do you remember about  
6 any conversations he had with that person?

7       A. I don't remember the exact conversations, but I  
8 know he did engage in conversations with somebody with  
9 that name. I don't know if that's their real name or  
10 their nickname.

11      Q. Okay. You don't remember any specifics of any  
12 conversations he had with that person?

13      A. Not with that one, no.

14      Q. Okay. So -- but you're saying you know he had  
15 recorded conversations with that person?

16      A. I don't know if they were recorded at the time,  
17 but I know he -- that name does sound familiar.

18      Q. Okay. Fair to say that the juicy stuff, you  
19 remember those names, right?

20      A. I know the ones involved with like the murders,  
21 correct.

22      Q. Okay. But, you don't recall anything specific  
23 with his name?

24      A. The name sounds familiar, but I don't recall any  
25 of the exact conversations.

1 Q. Okay. He was never specifically told to have  
2 phone conversations with Solitario, or anything like  
3 that?

4 A. Not that I can remember.

5 Q. Okay. And, he was doing these calls for ten  
6 months, right?

7 A. For --

8 Q. For --

9 A. On the -- yes -- for the wire?

10 Q. Correct?

11 A. I'm sorry. Pardon me?

12 Q. He was -- he was having these phone calls and  
13 meeting up with these guys and getting that information  
14 on this case for -- for ten months, right?

15 A. Correct.

16 Q. Okay.

17 THE COURT: Counsel, we'll take the morning  
18 recess now for 15 minutes. Thank you.

19 MR. CHICK: Yes, sir.

20 (Court recessed at 11:31 a.m. and reconvened  
21 at 11:46 a.m.)

22 (Jury not present.)

23 MR. AMOLSCH: Your Honor, I have -- before  
24 you bring the jury out, I would just like to make  
25 another objection.

1                   The government, and Mr. Chick's  
2 cross-examination of the witness -- I'm sorry, Judge.  
3 Could we excuse the witness before I make my objection?  
4 I'm sorry.

5                   THE COURT: If you could step outside for  
6 just a moment, please. Thank you.

7                   (Thereupon, the witness withdrew from the  
8 stand.)

9                   MR. AMOL SCH: Thank you, Judge.

10                  Just for the record, when Mr. Chick was  
11 cross-examining the government agent, they were talking  
12 about the phone calls that were made and who they  
13 recorded. And her testimony was that they only recorded  
14 the people who participated in the murders.

15                  And we're going to hear extensive testimony  
16 from the government and from Junior about his recordings  
17 of Mr. Cerna, regarding taking to the grave sites. We  
18 have now heard twice, from the same witness, my memory,  
19 regarding the burial of the body, not the reburial --  
20 which Your Honor has already ruled on -- and again, that  
21 the only people she -- that Junior recorded were the  
22 people who participated in the murders.

23                  Again, we're talking plural, not singular.  
24 I just want to make objection again for the record,  
25 Judge.

1 THE COURT: All right. So noted.

2 MR. AMOLSCH: Thank you, Judge.

3 THE COURT: Bring the witness back now.

4 (Witness resumed stand.)

5 THE COURT: You can bring our jury out,  
6 Mr. Toliver. Thank you.

7 (Jury present at 11:48 a.m.)

8 THE COURT: You may be seated. Thank you.

9 All right, Counsel, you may proceed.

10 MR. CHICK: Thank you, Your Honor.

11 CROSS-EXAMINATION (Continued)

12 BY MR. CHICK:

13 Q. Agent Born, you said that the names that you  
14 remember are the names that came up during -- during  
15 discussions about one murder or the other, right?

16 A. Correct.

17 Q. Okay. And, I just want to make sure, you learned  
18 about the murder of Little -- Lil Guasón, correct?

19 A. Correct.

20 Q. That's Gerson Aguilar Martinez?

21 A. That's his real -- I'm not sure. I know him by  
22 Little Guasón.

23 Q. Okay. But, you got information about that  
24 murder, correct?

25 A. Correct.

1 Q. Okay. And, you didn't hear anything about  
2 Solitario with respect to that murder.

3 A. I -- I don't remember.

4 Q. Okay. But, you said you would remember the names  
5 that were --

6 A. I remember the name being familiar as  
7 communicating with my source, Junior, yes.

8 Q. Okay. The name -- just to follow up on that, you  
9 say you remember your source, Junior, you know that he  
10 had conversations with Solitario.

11 A. I believe so, yes.

12 Q. Are you able right now, since you don't have your  
13 notes and you haven't looked at them in a while -- are  
14 you able to tell whether your memory of that is about  
15 him having conversations about Solitario, or about him  
16 having conversations with Solitario?

17 A. I'd have to reference my notes.

18 Q. Okay. Not quite sure?

19 A. Not quite sure.

20 Q. Okay. That's fair. And, you also talked to  
21 Junior. He would recount to you multiple times about  
22 different -- different acts of violence that he heard  
23 about, right?

24 A. Correct.

25 Q. Not just -- not just these murders, but all kinds

1 of other stuff, right?

2 A. Correct.

3 Q. And, what do you remember about Solitario with  
4 respect to that stuff?

5 A. I don't remember -- I don't remember.

6 Q. Okay. You talked to him about a guy named  
7 Skinny, right?

8 A. Skinny sounds familiar.

9 Q. Okay.

10 A. But I can't place the context of it.

11 Q. Okay. Do you remember a conversation you had  
12 with him about a guy named Skinny and a shooting that  
13 would have happened in late December of 2013,  
14 December 21, 2013?

15 A. I remember a shooting, but I don't remember if  
16 Skinny's name was associated with that one or not. I  
17 don't --

18 Q. Okay.

19 A. I'd have to check my notes.

20 Q. If you saw an e-mail that you sent, would that  
21 refresh your recollection?

22 A. If I had wrote an e-mail, yes.

23 MR. CHICK: Your Honor, permission to show a  
24 writing to -- to the witness.

25 THE COURT: All right.

1 (Document tendered.)

2 THE WITNESS: Yes, that's from me.

3 BY MR. CHICK:

4 Q. Okay. Now, I'm going to ask you -- I'm not  
5 asking you what the writing says --

6 A. Okay.

7 Q. -- but I'm asking you, does that refresh your  
8 recollection about whether you heard about a person  
9 named Skinny who was involved in a shooting from  
10 December 21st of 2013?

11 A. I'm not exactly sure if December 21st would have  
12 been the date of the shooting. That's the day before  
13 this e-mail. I guess -- "last night," I guess that  
14 would be correct, then.

15 Q. Okay. Do you ever recall Junior telling you  
16 whether he -- Junior told you that he heard Skinny was  
17 part of that shooting, right?

18 A. Correct.

19 Q. Did he ever tell you that Solitario was part of  
20 that?

21 A. I don't -- it's -- it does not -- according this  
22 e-mail, there is nothing in there about Solitario.

23 Q. Okay.

24 MR. CHICK: I'll take that back.

25

1 BY MR. CHICK:

2 Q. Agent Born, do you -- when did you stop working  
3 on this case, again?

4 A. Um, well, I stop handling Junior. I wasn't the  
5 case agent on the actual investigation file. I was the  
6 handling case agent for Junior. And, I moved to  
7 headquarters in September of 2014.

8 Q. Okay. And, who -- who handles Junior now? Do  
9 you know?

10 A. I believe Special Agent Fernando Uribe.

11 Q. Okay. He's -- he's the person that took over for  
12 you?

13 A. Correct. I believe so, yes. I'd have to defer  
14 to the squad, to see who they assigned him to, but I  
15 believe that's correct.

16 Q. Gotcha.

17 MR. CHICK: I don't have any further  
18 questions. Thank you very much.

19 THE WITNESS: You're welcome.

20 THE COURT: Redirect.

21 MS. MARTINEZ: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. MARTINEZ:

24 Q. There were a lot of questions on  
25 cross-examination about authorizations given to Junior

1 related to illegal activity.

2 A. Correct.

3 Q. When Junior was authorized to conduct illegal  
4 activity, was that a blanket authorization or specific  
5 to a particular act?

6 A. His authorization was to be involved in gang  
7 discussions. So, that was -- was -- I'd consider that  
8 blanket.

9 Q. And the blanket authorization for gang  
10 discussions, did that go beyond discussions?

11 A. And to be -- to be involved in; so he could  
12 attend meetings.

13 Q. And so, in addition to discussions and meetings,  
14 was there a blanket authorization?

15 A. I would say -- I'm sorry. What was that?

16 Q. Let's talk specifically about -- there were  
17 questions about narcotics activities, for example.

18 A. Right.

19 Q. Did Junior have a blanket authorization to engage  
20 in illegal narcotics activities?

21 A. No, he did not.

22 Q. Was there ever a specific authorization for  
23 specific conduct related to narcotics?

24 A. Specifically related to narcotics? Not that I'm  
25 aware of. The only time, I think, involving narcotics

1 was when he brought that joint and we didn't have  
2 authorization for that.

3 Q. There was also a question about, something about  
4 rent and a brothel. Did Junior have a blanket  
5 authorization to engage -- let's start with  
6 prostitution -- to engage in prostitution?

7 A. No, he did not.

8 Q. Was he given a blanket authorization to run a  
9 brothel?

10 A. No, he was not.

11 Q. How about a blanket authorization to collect rent  
12 from a brothel?

13 A. No, he was not.

14 Q. Tell the jury about the specific instance that  
15 was asked about on cross-examination involving a brothel  
16 and rent.

17 A. That one, he would have -- we would have got  
18 specific authorization for him to participate in that  
19 event.

20 Q. In advance or after the event?

21 A. In advance.

22 Q. Why?

23 A. Because we knew -- we knew about it. So, I  
24 always got authorization prior to any of the activities.  
25 Before they were -- before any illegal activity was

1 conducted, I always got authorization.

2 Q. What's the -- what's the purpose of getting the  
3 authorization prior to the actual illegal activity?

4 A. Getting -- obtaining the proper approvals.

5 Q. In the instance with the rent and the brothel,  
6 Mr. Salvato asked: How much money did Junior receive?  
7 Was Junior allowed to profit from this particular  
8 illegal activity?

9 A. No, he was not.

10 Q. What happened to the money?

11 A. If I remember correctly -- and I'd to refresh  
12 my -- from my notes -- but I believe he, with the person  
13 he assisted, they then took it to another separate  
14 location.

15 Q. In instances in which Junior had any involvement  
16 with money and any gang or illegal activity, what was  
17 the policy and procedure with respect to that money?

18 A. With anything that he got for money, he would  
19 have been required to turn it in to the FBI.

20 Q. To your knowledge, is that what he did?

21 A. To my knowledge, yes. I don't recall any of the  
22 times that he obtained any money, that he, like, was --  
23 took home with him. He -- I don't recall any of those  
24 events.

25 Q. When he obtained money and provided it to the

1       FBI, when would he provide it to the FBI?

2           A. Usually, after -- after every operation that we  
3       conducted with him, we would do a debrief in a secure  
4       location, where he would provide whatever items he would  
5       have obtained at that particular operation.

6           Like, for example, when he got the gun, then he  
7       provided the gun, then, immediately afterwards.

8           Q. You were asked questions about communicating with  
9       Junior on his personal cellphone as opposed to the FBI  
10      phone on which there was a consensual wire. What was  
11      the purpose of permitting Junior to communicate with you  
12      on the personal cellphone?

13          A. I allowed him to communicate with me on his  
14      personal phone because I knew I was documenting  
15      everything and putting it into the case file as to what  
16      he was telling me, and then the -- the Washington Field  
17      Office violent gang squad would be able to look at what  
18      he was telling me and compare it to whatever was  
19      appearing on the FBI recorded phone call.

20          Q. Speaking of the FBI recorded phone call, on the  
21      FBI phone with the consensual wire, was every single  
22      phone call recorded?

23          A. If it was made on that phone, it was recorded.

24          Q. And on that phone, did Junior have any ability to  
25      pick and choose which call was recorded or not recorded?

1 A. On the FBI phone, he did not.

2 Q. During the time period of this investigation,  
3 when the consensual wire was on that FBI phone, were  
4 there lengthy periods of time in which you had no  
5 contact with Junior?

6 A. No, there were not.

7 Q. How often were you talking to Junior during the  
8 period of time that he was using that phone with the  
9 consensual wire?

10 A. During that timeframe, probably almost every day.

11 Q. You've talked about operations in which Junior  
12 went in with a body wire to record audio or video. Were  
13 you involved in every single operation that Junior was  
14 involved in?

15 A. No, I was not. I was aware of them but I was not  
16 involved.

17 Q. In operations in which you were involved, were  
18 you the only FBI agent or were other FBI agents involved  
19 as well?

20 A. There were multiple FBI agents involved.

21 Q. And in operations in which you were aware, but  
22 you weren't involved, were there FBI agents involved?

23 A. There would have been multiple FBI agents  
24 involved.

25 Q. And in those operations, was Junior permitted to

1 have contact with the other FBI agents?

2 A. Yes, he was, during those operations.

3 Q. Now, you were asked a lot of questions about the  
4 marijuana that Junior had on May 15, 2014. First of  
5 all, how much marijuana was it?

6 A. It was one joint.

7 Q. How did you find out that he had a joint?

8 A. He told me.

9 Q. When did he tell you?

10 A. When he arrived at our meet location.

11 Q. What happened to the marijuana after he told you  
12 that he had the one joint when he arrived?

13 A. I tried to get authorization to allow him to  
14 provide it to Leopardo, but, I was not able to reach  
15 anybody that could give me authorization. So, the joint  
16 was seized and disposed of.

17 Q. Once this one joint was seized and disposed of,  
18 why didn't you stop the entire operation?

19 A. To be honest, I didn't even think about it. It  
20 didn't seem like it warranted -- we were there for a  
21 specific operation where Junior was meeting Leopardo to  
22 locate the possible burial locations of two young men.  
23 It didn't cross my mind for one joint to halt the  
24 operation or suggest it.

25 But I did follow proper procedures, according to

1       FBI guidelines, on recording the unlawful illegal  
2       activity, unauthorized illegal activity.

3                   MS. MARTINEZ: Thank you. No further  
4       questions.

5                   THE COURT: May the witness be excused?  
6                   (No audible response.)

7                   THE COURT: You're free to leave. Thank you  
8       very much.

9                   (Thereupon, the witness withdrew from the  
10      stand.)

11                  MS. AUSTIN: Your Honor, if we could request  
12       on Agent Born, please.

13                  THE COURT: Reserve recall?

14                  MS. AUSTIN: Yes.

15                  THE COURT: Okay. We will make her  
16       available for recall, if necessary. Thank you.

17                  MS. MARTINEZ: Your Honor, I apologize for  
18       not doing this at the break, but prior to the next  
19       witness, may we take up one very short issue outside the  
20       presence of the jury?

21                  THE COURT: All right.

22                  Ladies and gentlemen, we will have you go  
23       out for just a moment. Recess for just a moment. Thank  
24       you.

25                  (Jury not present.)

1 THE COURT: You may be seated.

2 MS. MARTINEZ: Your Honor, during the next  
3 witness, the next witness will use the two pseudonyms,  
4 homeboy two and homeboy three. We would ask that you  
5 instruct the jury, at the Court's -- whenever the Court  
6 wishes, either before the testimony or perhaps when the  
7 witness gets to that point in the testimony, simply that  
8 the use of those two pseudonyms is permitted and  
9 authorized by the Court. I don't think any further  
10 instruction is necessary.

11 In addition, Your Honor, the next witness  
12 will involve transcripts, which have been redacted  
13 according to Your Honor's orders, and also some  
14 agreement with -- with defense counsel.

15 Those redactions include, of course, the  
16 "verbatim" on the front. But more importantly, there  
17 are substantive reductions throughout the transcripts,  
18 either in compliance with Your Honor's orders or, in  
19 some instances, where defense counsel and the government  
20 have agreed that -- that there is no reason that  
21 particular things need to be in the transcripts -- the  
22 government has agreed to redact.

23 So, when we get to the transcripts or at the  
24 beginning of the witness, as Your Honor prefers, we  
25 would ask that the jury be instructed that they should

1 simply -- they should take -- make no inference from the  
2 fact that there are redactions in the transcripts.

3 THE COURT: All right.

4 MR. CRAWLEY: Court's indulgence, Your  
5 Honor.

6 THE COURT: Same motion, now or later?

7 MR. AMOLSCH: Regarding --

8 THE COURT: The instruction.

9 MR. AMOLSCH: Whatever the Court desires.

10 THE COURT: Let's do it now, so we can keep  
11 going.

12 MR. AMOLSCH: Thank you, Judge.

13 MR. CRAWLEY: May I approach the government  
14 for one second, Your Honor?

15 THE COURT: Yes, uh-huh.

16 MR. AMOLSCH: Your Honor --

17 THE COURT: Mr. Amolsch, tell me the purpose  
18 of instructing the jury now. What would be the purpose  
19 of it?

20 MR. AMOLSCH: The purpose of the timing or  
21 the purpose of the instructions?

22 THE COURT: Both.

23 MR. AMOLSCH: Okay. This is similar, I  
24 think, Judge, to a 404(b) issue, where the government is  
25 going to present evidence that Mr. Cerna participated in

1                   the reburial of Trujillo, after his murder.

2                   And we believe, Judge, that, one, that is,  
3                   one, a criminal act, one of the other co-defendants was  
4                   charged with moving the body afterwards. It's another  
5                   bad act.

6                   I believe -- I'm not sure -- maybe it was --  
7                   I'm not sure who was indicted on that, but one of the  
8                   co-defendants is charged with that particular crime.  
9                   Mr. Benitez, actually, ha been indicted with that  
10                  particular charge, Judge. So, that is technically a bad  
11                  act as well.

12                  And our -- our entire concern regarding the  
13                  Court allowing the testimony as it relates to  
14                  Mr. Cerna's participation in the Trujillo incident is  
15                  that that will necessarily bleed over into the  
16                  government's evidence as it relates to his participation  
17                  in the murder of Mr. Aguilar.

18                  So, it is very akin to, if not identical to,  
19                  a 404(b) issue from a bad acts point of view. And while  
20                  Your Honor has ruled that there's nothing impermissible  
21                  about the government introducing evidence relating to  
22                  the reburial, our position is that while the Court has  
23                  allowed that -- and we don't think it should be allowed  
24                  at all -- that to prevent any bleed-over effect from the  
25                  jury taking that evidence that he participated in the

1 reburial of Trujillo only days after his murder, that if  
2 he -- that he had some connection with the Trujillo  
3 murder, that he -- that they shouldn't consider that as  
4 evidence that he also participated in the Aguilar  
5 murder, especially given the similarity of the conduct.

6 In the case there is a reburial. He is  
7 taken to the grave -- to the two grave sites. This  
8 witness -- I have already objected twice, Judge,  
9 regarding how I think they are mixing and matching the  
10 two murders.

11 I think -- I've made mistrial motions, which  
12 Your Honor has denied. I think this is a real concern.  
13 And so, at a minimum, I believe Your Honor should  
14 instruct the jury that when they're hearing evidence  
15 about Mr. Cerna's alleged participation in the reburial  
16 of Trujillo, that is not at all evidence that he  
17 participated in the murder of Trujillo, nor should it be  
18 considered as evidence that he participated in any other  
19 crime, especially given that Mr. Benitez has been  
20 indicted and charged with the reburying Mr. Trujillo,  
21 and Mr. Cerna has not.

22 It's a productive instruction, Judge. I  
23 think it keeps the record as clean as it can be right  
24 now regarding the charge for which Mr. Cerna is charged,  
25 the evidence that he will be facing relating to that

1 particular charge.

2 But, it's in- -- inflammatory stuff, Judge.  
3 I mean, you know, you're going to hear about, I would  
4 imagine, I don't know all the government's proof, but  
5 we're going to hear about the state of the body when it  
6 was removed from the grave.

7 We're going to hear about how Mr. Cerna, I  
8 think, was able to identify how he was killed, which we  
9 believe indicates that he actually participated in the  
10 murder. How else could he know that.

11 But even --

12 THE COURT: He can know that because he's a  
13 gang member.

14 MR. AMOL SCH: Exactly. I understand. But  
15 this is -- I'm just articulating my concern.

16 THE COURT: I understand.

17 MR. AMOL SCH: I'm not -- I'm not asking Your  
18 Honor to reconsider that.

19 But, given the inflammatory nature of that,  
20 and -- I believe there's a real concern the jury will  
21 just hear that and automatically assume the similarity  
22 of conduct, in and of itself, will say that Mr. Cerna is  
23 a bad guy, he is participating in the reburial. He  
24 seems to be enjoying it or laughing or however it is  
25 they characterize his behavior during that, that they're

1 going to assume, unfairly, that if he was doing this and  
2 part of this, that it is a foregone conclusion, or at  
3 least more likely than not, or evidence, that he also  
4 participated in the Aguilar murder.

5 So, what I'm asking the Court to do is  
6 simply instruct them that that's the reason that the  
7 evidence is being introduced.

8 Your Honor articulated those reasons in your  
9 order. I took that language right from your order.  
10 Your Honor again repeated it. It's a standard 404(b)  
11 instruction, Judge. I took it right from either the  
12 Fifth Circuit or the Fourth Circuit or the Third Circuit  
13 pattern instructions, and I modified it a little bit to  
14 the terms of this -- of this case.

15 But I think it's important, Judge. I mean,  
16 the witnesses are, again, already messing this up. We  
17 had the issue with Mr. Cerritos on homeboy one. Now  
18 we're on homeboy two and three. The jury needs to be  
19 instructed on why this evidence is being admitted, and  
20 the permissible purposes for which it can consider that  
21 evidence.

22 THE COURT: Should I do it now or should I  
23 do it at the end of the trial, when they are going to be  
24 given an instruction to consider the evidence separately  
25 as to each individual, and they are going to be given a

1           verdict form that only has one offense, and they're not  
2           to be charged with looking at any other offenses that  
3           there might be, except those in the indictment? What  
4           about that?

5           MR. AMOLSCH: If I have to choose one or the  
6           other, I would prefer it now. But I would suggest that  
7           there is no harm in giving it twice; instruct the jury  
8           as they hear this witness that that's the reason they  
9           can consider it, and that's it.

10           And then you can again instruct the jury at  
11           the end, when they're looking at a verdict form, that --  
12           I don't think there's any harm, quite honestly, in doing  
13           it twice. But if Your Honor is making me choose one,  
14           then I would -- I would suggest we do it now.

15           THE COURT: All right.

16           Government counsel.

17           MS. MARTINEZ: Your Honor, unlike defense  
18           counsel, we're not actively checking our e-mails during  
19           trial, and apparently this is something that was  
20           provided by e-mail to us while we've been sitting here  
21           in the courtroom, so, we haven't seen it.

22           THE COURT: I see. Well, we'll take it up  
23           later then.

24           MR. AMOLSCH: I have a copy that I can show  
25           to her right now.

1                   THE COURT: Well, I mean, I want to give her  
2 a chance to look -- and co-counsel to look it over.

3                   MS. MARTINEZ: I can -- I'm not sure I can  
4 respond to the instruction, Your Honor, because I'd like  
5 to look at that closely.

6                   But I can respond to -- very briefly to the  
7 rest of what Mr. Salvato said, if it would be helpful.  
8 Otherwise, we can take it up later, however Your  
9 Honor prefers.

10                  THE COURT: Take it up later. I don't want  
11 to complicate things more than they need to be.

12                  MR. CRAWLEY: I still need a moment, Your  
13 Honor, because I haven't had a chance to talk to them  
14 about my situation.

15                  MS. MARTINEZ: Your Honor, for the record,  
16 Mr. Salvato -- there's no -- no ill will here.  
17 Mr. Salvato wasn't trying to pull --

18                  THE COURT: I didn't think that.

19                  MS. MARTINEZ: -- a fast one on us.

20                  THE COURT: I didn't think that at all.

21                  MS. MARTINEZ: Thank you, Your Honor.

22                  (Pause.)

23                  MS. MARTINEZ: Your Honor, I believe that  
24 Mr. Crawley wants me to put on the record that our  
25 understanding is that this witness will use the

1 pseudonyms, homeboy two and homeboy three, to reference  
2 Lemus Cerna and Duran Cerritos, to the extent that this  
3 witness talks about the involvement of those two  
4 defendants in the murder of Nelson Omar Quintanilla  
5 Trujillo, AKA Lagrima.

6 The government's understanding is that the  
7 witness will not use a pseudonym for Mr. Crawley's  
8 client, other than in the context of that murder.

9 And, Your Honor, in an abundance of  
10 caution -- Mr. Crawley seems very concerned about this.  
11 This is not a cooperating defendant. This individual is  
12 not in custody.

13 But, perhaps, as we had suggested with the  
14 cooperating defendants who are in custody, perhaps we  
15 should recess briefly so that we can go over just that  
16 instruction with this witness, and be as sure as we can  
17 be before he gets on the stand that he understands the  
18 scope of the pseudonyms.

19 We've done that previously --

20 THE COURT: Okay.

21 MS. MARTINEZ: -- but Mr. Crawley is  
22 concerned, and we have no objection to that if Your  
23 Honor will permit it.

24 THE COURT: All right. Okay. We will take  
25 a brief recess. Let me know when you're ready.

1 (Court recessed at 12:11 p.m. and reconvened  
2 at 12:30 p.m.)

3 (Jury not present.)

4 MR. AMOLSCH: Judge, I'm sorry. One  
5 quick -- for the record. When Your Honor ruled on the  
6 motion for -- Mr. Zimmerman's motion for severance, the  
7 other defense counsel informed Your Honor, and Your  
8 Honor allowed them to, basically, on cross-examination  
9 of Junior, or whoever, say, "My client is not homeboy  
10 two," "My client is not homeboy three," or "My client is  
11 not homeboy two."

12 I expect all of them will do that at some  
13 point, at which point, again, it will be overwhelmingly  
14 obvious who the other homeboys are. So, again, I'm just  
15 going to object to that instruction, Judge.

16 The "homeboy," as you have now heard,  
17 carries with it special significance. It's someone who  
18 is a gang member, not somebody who just happened to be  
19 present at the murder.

20 The evidence will be that PVLS committed the  
21 murder. There is only six or five members of PVLS at  
22 this point.

23 I understand your Court's ruling. Again, I  
24 would just ask for the Court to instruct them, "Others,"  
25 not "homeboy two," "homeboy three." I just wanted to

1 put that on the record, Judge.

2 THE COURT: All right. Motion denied.

3 MS. MARTINEZ: Your Honor, may I respond  
4 briefly to that?

5 I didn't understand that all of the other  
6 defense attorneys were going to stand up and say, "My  
7 client is not homeboy two," "My client is not homeboy  
8 three," "My client is not homeboy two," "My client is  
9 not homeboy three."

10 Your Honor, I would suggest that that's not  
11 necessary, and that Your Honor not permit those  
12 cross-examination questions, which may essentially  
13 involve one defense counsel trying to imply to the jury  
14 that -- Mr. Crawley's -- or Mr. Salvato's client is  
15 homeboy two or homeboy three.

16 I don't think it's necessary to ask those  
17 questions, and I do think that that could introduce some  
18 confusion or some prejudice because, of course,  
19 Mr. Crawley, Mr. Conte, Mr. Salvato, won't stand up and  
20 ask that exact same question.

21 MR. JENKINS: Your Honor, it won't be an  
22 issue for Mr. Lopez Torres. I suspect that the witness  
23 is going to identify him by name --

24 THE COURT: Okay.

25 MR. JENKINS: -- as being a participant.

1                   THE COURT: All right.

2                   MR. CONTE: Your Honor, Mr. Cerritos joins  
3 the motion of Mr. Amolsch, for the record.

4                   THE COURT: You join the motion of what?

5                   MR. CONTE: Of Mr. Christopher Amolsch.

6                   THE COURT: Of Mr. Amolsch? Okay. Thank  
7 you.

8                   MR. ZIMMERMAN: Your Honor, if I might be  
9 heard.

10                  Mr. Amolsch was referring to my motion for  
11 severance. This was the motion for severance I made  
12 after the Fourth Circuit ruling came down and the Court  
13 dismissed, I believe it was Count 4 as to Mr. Cerritos,  
14 that I said -- that I thought at that point separate  
15 trials would be necessary, because of all the possible  
16 prejudice. Mr. Benitez is not charged with the Lagrima  
17 murder, but he is charged with the reburial.

18                  And in order to make this clear, in order to  
19 elicit that he wasn't there and to avoid all of the  
20 prejudice and the smearing and, frankly, a lot of stuff  
21 that Mr. Amolsch talked about, from negatively impacting  
22 Mr. Benitez, that separate trials would be -- would be  
23 necessary.

24                  And the Court ruled that they wouldn't be  
25 because there wouldn't be any issue with us eliciting

1 from the witnesses that Mr. Gaitan Benitez is not  
2 homeboy three and is not homeboy four.

3 Again, because of the similarities and  
4 because of the, um, possible prejudice, that's an issue.

5 And, there's actually a further important  
6 exculpatory issue, in that there is -- there is evidence  
7 that Mr. Benitez actually falsely implicated himself in  
8 the Lagrima murder, which is critical to the defense,  
9 that they are blustering.

10 So, it is critical for us to establish, as a  
11 good example of blustering, that he is not homeboy two  
12 and homeboy three.

13 And again, it was my understanding, from the  
14 denial of that motion for severance that was made  
15 orally, that we wouldn't have any difficulty in  
16 eliciting this testimony, that the Court's rulings with  
17 regard to these redactions and everything going off  
18 with -- going on with Cerritos and Cerna would not  
19 impact our ability to ask those questions.

20 And, it's critical for us -- we don't have  
21 any objection to, um, to the designation of -- instead  
22 of "homeboy two" or "homeboy three" as "others" or  
23 "persons." I think that could possibly provide less  
24 prejudice to, um, to Cerna and Cerritos.

25 But regardless of whatever the moniker is,

1 we believe it's critical to the defense that we be  
2 allowed to elicit that testimony.

3 THE COURT: I don't think I made any ruling  
4 that you couldn't ask that question, did I?

5 MR. ZIMMERMAN: No, you didn't.

6 THE COURT: All right.

7 MR. ZIMMERMAN: You specifically ruled that  
8 we could ask that question --

9 THE COURT: All right.

10 MR. ZIMMERMAN: -- in denying the motion for  
11 severance.

12 THE COURT: Okay.

13 MR. ZIMMERMAN: Thank you, Judge.

14 THE COURT: Is there something you need from  
15 me? Is that it?

16 MR. ZIMMERMAN: I just wanted to make that  
17 record and clarify that, in --

18 THE COURT: I think that -- you know, I  
19 don't want to say "over-thinking it." I mean, it seems  
20 to me that, ultimately, the jury is going to be  
21 instructed to look at each individual separately, look  
22 at what they're charged with, look at the evidence  
23 against them.

24 And if your client is not charged with some  
25 uncharged offense, I don't see it being a problem.

1                   MR. ZIMMERMAN: So, we can elicit that  
2 testimony.

3                   THE COURT: I never said you could not.  
4 Unless you're telling me I did.

5                   MR. ZIMMERMAN: No.

6                   THE COURT: I don't remember saying that.

7                   MR. ZIMMERMAN: No.

8                   THE COURT: The government just asked me to  
9 put that restriction on cross-examination. I'm not  
10 willing to do it. I don't think it's necessary to do  
11 it.

12                  MR. ZIMMERMAN: That's correct, Your Honor.  
13 That was my understanding of the ruling.

14                  THE COURT: Okay. All right. Do you need  
15 something else?

16                  MR. ZIMMERMAN: That's it. Thank you.

17                  THE COURT: Okay. All right.

18                  Yes.

19                  MS. MARTINEZ: One completely unrelated and  
20 minor thing. We've conferred with Ms. Austin and  
21 Mr. Zimmerman regarding their desire to potentially  
22 recall SA Born.

23                  She is outside of the courtroom now, and  
24 certainly will follow Your Honor's orders. But our  
25 understanding -- defense counsel -- the government, is

1           that she would not be recalled today.

2           So I would ask the Court for permission to  
3       have an agent instruct her that she does not need to  
4       remain in the courthouse all day, and go back to her  
5       normal duties. We will coordinate with the defense  
6       counsel if there is a need for her to come back and  
7       testify.

8           THE COURT: Mr. Zimmerman is standing.

9           MR. ZIMMERMAN: Your Honor, we have no  
10      objection to that.

11           Again, since we imagine calling her in the  
12      defense case, obviously, we will not need her until the  
13      government's case-in-chief is over.

14           There is one issue that, as a matter of  
15      policy, the United States Attorney's Office insists that  
16      we comply with the *Touhy* regulations in making requests.

17           And while this is certainly understandable,  
18      if we wanted to reach out and grab a governmental  
19      employee as a defense witness who isn't currently a  
20      witness, we would submit that -- that FBI Agent Brenda  
21      Born and any of the other government agents that we  
22      specifically ask to reserve, us or any co-counsel, that  
23      they're reserved. They're already witnesses. We would  
24      simply be bringing them back, and that we don't need to  
25      comply with *Touhy*.

1           I don't have any problem sending a letter to  
2 the U.S. Attorney's Office. I just think it would be --  
3 it's not really necessary, and I don't want to be in a  
4 situation where the government says, you know, "We" --  
5 "under *Touhy*, we don't think you get to call her as a  
6 witness," because we think she already is a witness, and  
7 that the *Touhy* regulations are unnecessary.

8           I'm willing to go through the motions of it,  
9 but, frankly, you know, I would like the Court to rule  
10 that she's a witness and we can recall her in the  
11 defense case.

12           THE COURT: Okay.

13           MR. ZIMMERMAN: Thank you, Judge.

14           THE COURT: Any problem with that? Save us  
15 all a lot of time.

16           MS. MARTINEZ: Your Honor, I am required by  
17 department policy to state that the *Touhy* regulations  
18 apply any time that defense counsel wishes to call a  
19 federal employee as a witness.

20           And, Your Honor, it would be our position,  
21 consistent with that departmental policy, which I am  
22 obliged to follow, that *Touhy* would have to be complied  
23 with.

24           Other defense counsel in this case have  
25 followed those procedures. To my knowledge, there has

1       been no problem whatsoever and no issue with anyone not  
2       getting authority to call someone that they want to.

3                   So -- I certainly understand Your Honor's  
4       point about --

5                   THE COURT: It seems to be a waste of time.  
6       I mean, if I enter an order, would that help you from  
7       the standpoint of policy?

8                   Because I can do that very easily, and keep  
9       things moving. I really don't have time --

10                  MS. MARTINEZ: Your Honor, I will leave it  
11      up to Your Honor. I don't think --

12                  THE COURT: I'll issue an order that she is  
13      to come back. That simple. All right.

14                  MS. MARTINEZ: Thank you, Your Honor.

15                  May I simply ask an FBI agent --

16                  THE COURT: She can be excused.

17                  And just let the government know when you  
18      want to call her back.

19                  MS. MARTINEZ: Thank you very much, Your  
20      Honor.

21                  THE COURT: Thank you.

22                  Ready to bring the witness out?

23                  You want me to instruct the witness or  
24      instruct the jury?

25                  You want me to talk to the jury about

1 homeboy two and three, and the transcripts and  
2 redactions? Those are the three things that --

3 MS. MARTINEZ: Yes, Your Honor. I don't  
4 think this witness needs Your Honor's instruction, but  
5 certainly we defer to Your Honor if Your Honor wishes to  
6 address the witness.

7 THE COURT: No. Okay. I will not instruct  
8 the witness.

9 You can bring the jury out, Mr. Toliver.  
10 Thank you.

11 (Jury present at 12:38 p.m.)

12 THE COURT: You may be seated.

13 All right, Counsel, you may proceed.

14 MS. MARTINEZ: The government calls Jose  
15 Garcia.

16 THE COURT: Ladies and gentlemen, during  
17 some of the testimony you may hear reference to the term  
18 "homeboy two" or "homeboy three."

19 That's on my instruction. I told the  
20 witness to use those terms.

21 And there will also be transcripts that you  
22 will have during the course of the witness' testimony.  
23 Some of them are redacted. That's based on my rulings  
24 that they be redacted.

25 You can bring him out.

1 (Witness sworn.)

2 THE WITNESS: I do.

3 THE COURT: You may proceed.

4 THEREUPON, JOSE GARCIA, having been duly  
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. MARTINEZ:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Would you state your name and spell it for the  
11 record, please.

12 A. Jose Garcia, J-o-s-e, G-a-r-c-i-a.

13 Q. Mr. Garcia, how old are you?

14 A. Thirty-three.

15 Q. Where were you born?

16 A. El Salvador.

17 Q. When did you come to the United States?

18 A. Around 2000.

19 Q. How old were you when you came to the United  
20 States from El Salvador?

21 A. About 17, 18.

22 Q. Can you speak right into that microphone?

23 A. Seventeen, eighteen.

24 Q. You can actually move it a little closer to you.

25 That way you don't have to lean.

1 A. Okay.

2 Q. Perfect. Thanks.

3 How did you get to the United States?

4 A. I crossed the border.

5 Q. Was that legally or illegally?

6 A. Illegally.

7 Q. When you first came here to the United States,  
8 where did you go?

9 A. I came to Virginia, State of Virginia.

10 Q. How far did you go in school in El Salvador  
11 before you came to the U.S.?

12 A. Almost high school.

13 Q. Did you complete the equivalent of high school?

14 A. No.

15 Q. When you came here to the U.S., did you continue  
16 with your schooling?

17 A. Yes.

18 Q. What did you -- what school did you go to -- or  
19 how far did you go in school here in the U.S.?

20 A. About 12 grade.

21 Q. Did you complete 12th grade?

22 A. No.

23 Q. Did you continue with schooling after that?

24 A. No.

25 Q. What languages do you speak?

1 A. Spanish, and English. I learned English.

2 Q. Are you proficient in speaking both Spanish and  
3 English?

4 A. Yes.

5 Q. What languages can you read?

6 A. Spanish and English.

7 Q. What languages can you write?

8 A. Both.

9 Q. Are you proficient in both, in reading and  
10 writing?

11 A. Yes.

12 Q. Have you ever been a member of a gang?

13 A. Yes.

14 Q. What gang?

15 A. MS-13.

16 Q. When did you join MS-13?

17 A. Around 2002, 2002.

18 Q. How old were you?

19 A. Probably around 18, 19, probably. I can't  
20 recall.

21 Q. Within MS-13, did you belong to a particular  
22 clique?

23 A. Yes.

24 Q. What clique was that?

25 A. Silvas.

1 Q. What's the full name of that clique?

2 A. Silvas Locos Salvatruchos.

3 Q. Is it also abbreviated in any way?

4 A. I'm sorry?

5 Q. Is it abbreviated in any way?

6 A. Yes.

7 Q. How is a abbreviated?

8 A. SLS.

9 Q. Why did you join MS-13?

10 A. First, I came to know kids from school. They  
11 were used to hanging around the gang members, obviously.  
12 So there was -- some of the guys were my friends, and, I  
13 used to get to know them, all the time. And little by  
14 little, I was getting more involved with them, to the  
15 point I find out they were belong to a gang.

16 Q. How were you initiated into the gang?

17 A. They beat -- beat you up for 13 seconds.

18 Q. What is that called?

19 A. Jumped in.

20 Q. How old were you when you were jumped in?

21 A. Around 18, 19.

22 Q. What's the purpose of beating someone for  
23 13 seconds to have them join the gang?

24 A. It just the rule of the gang, that you have to --  
25 they have to beat you up for 13 seconds.

1 Q. Once you joined the gang, were you given a  
2 nickname or a gang name?

3 A. I wasn't given a nickname. I didn't like no  
4 nicknames.

5 Q. Were you later given a nickname?

6 A. It was -- yeah. It was Junior.

7 Q. When were you given the nickname Junior?

8 A. When I was jumped in.

9 Q. Once you were jumped in, what was your status in  
10 the gang?

11 A. What were you called?

12 A. Um, it was a -- I would say like soldier, you  
13 start.

14 Q. What is a soldier?

15 A. What does it mean to be a soldier?

16 A. You just follow what -- whoever has the first  
17 word, or run the clique tell you to do, and just follow  
18 the rules.

19 Q. What is the first word?

20 A. He's the one who controls the clique at that  
21 point.

22 Q. What are some other terms for a soldier in MS-13?

23 A. Homeboy, regular homeboy.

24 Q. Now, what does someone have to do in MS-13 in  
25 order to become a homeboy?

1 A. Um, at that time, or right now?

2 Q. Well, let's start with at that time.

3 A. At that time, they just -- they had to know you,  
4 probably chill with them a couple of times, and just  
5 hang out with them, pretty much.

6 Q. And now you said, "or right now." Did that  
7 change at some point?

8 A. Yes.

9 Q. How did it change?

10 A. Right now, in order for you to become part of  
11 that gang, you have to kill someone.

12 Q. Do you know when that changed?

13 A. It changed, I will say, around Two Thousand --

14 MR. CONTE: Objection, foundation.

15 THE WITNESS: -- Seven, 'Eight.

16 THE COURT: I'm sorry. I can't hear you.

17 MR. CONTE: I don't think there's any  
18 foundation for the question.

19 THE COURT: Foundation for what?

20 MR. CONTE: To answer this question.

21 THE COURT: Okay.

22 MS. MARTINEZ: Your Honor, he has testified  
23 that he was involved in the gang. He testified about  
24 knowledge of the gang. I think there has been  
25 foundation, but --

1                   THE COURT: All right.

2                   You can save that for cross. Objection  
3 overruled.

4 BY MS. MARTINEZ:

5 Q. I'm sorry. Did you say that there was a specific  
6 point in time that it changed, or did it change  
7 gradually?

8 A. It just changed gradually.

9 Q. Now, did you have to commit an act of violence in  
10 order to become a homeboy?

11 A. No.

12 Q. Through your experience in MS-13, have you  
13 come -- become familiar with the rules of MS-13?

14 A. Yes.

15 Q. And, how is it that you've become familiar with  
16 the rules of MS-13?

17 A. Um, I was learning little by little, with the  
18 time, how the gang has changed rules, and how they --  
19 they act, in order to influence people or try to, um, I  
20 will say, persuade kids to become gang members.

21 Q. What are the core rules of MS-13?

22 A. Never snitch. Never cooperate with the police.  
23 Never turn your back on your homeboy. And, you have to  
24 commit crimes to rival gang members, kill -- they call  
25 it kill *chavalas*.

1 Q. What is a *chavala*?

2 A. It's a rival gang member, whoever is a not part  
3 of MS-13.

4 Q. And what are the rules with respect to *chavalas*?

5 A. Kill them. Just go there, fight and kill them,  
6 do whatever they can.

7 Q. Now, you said there's a rule about respecting  
8 fellow homeboys. Is that right?

9 A. Yes.

10 Q. What does that mean?

11 A. The rules that you have to not be disrespectful  
12 for any homeboy, don't get involved with a homeboy's  
13 girlfriend, and never let the -- never let the homeboy  
14 down in anything.

15 Q. When you say not get involved with a homeboy's  
16 girlfriend, what does that mean?

17 A. That you don't have to get involved, having sex  
18 with -- that you know that the girl is somebody else's  
19 girlfriend.

20 Q. What are the possible consequences if a gang  
21 member gets involved with another gang member's  
22 girlfriend?

23 A. They will kill you.

24 Q. The first rule that you mentioned was about  
25 cooperating with law enforcement.

1 A. Yes.

2 Q. What are the consequences for a gang member who  
3 cooperates with law enforcement?

4 A. They will kill you.

5 Q. What is it called when the gang decides to kill  
6 someone, for example, for cooperating with law  
7 enforcement?

8 A. A rat.

9 Q. Are you currently a confidential human source for  
10 the FBI?

11 A. Yes.

12 Q. When did you start being a confidential human  
13 source for the FBI?

14 A. Back in 2005.

15 Q. How long had you been in the gang by the time you  
16 began working with the FBI?

17 A. About two years.

18 Q. Why did you decide to begin cooperating with law  
19 enforcement?

20 A. That wasn't -- that wasn't me. That was not the  
21 life that I want to live.

22 Q. What do you mean?

23 A. I didn't like it, how it become so -- it was  
24 pointless. That was not me, doing violent stuff for  
25 something makes no sense.

1 Q. Have you been a confidential human source  
2 consistently since 2005?

3 A. Yes.

4 Q. And, during your over ten years of being a  
5 confidential human source, how have you provided  
6 information to the FBI?

7 A. Um, by phone, electronic devices, and recordings.

8 Q. Who do you provide information to?

9 A. To FBI.

10 Q. Specifically within FBI, is there someone who's  
11 assigned for you to provide information?

12 A. Yes. It was my handler at that time.

13 Q. And what would you report on to your handler?

14 A. Anything. Anything has to do with the gang, even  
15 if it is so small or big, that was my first thing, to  
16 let them know.

17 Q. Have you testified in court before?

18 A. Yes.

19 Q. When?

20 A. 2006 or '7, I believe.

21 Q. What court?

22 A. Right here.

23 Q. What did you testify about?

24 A. About a murder.

25 Q. Was it a gang murder?

1 A. Yes.

2 Q. In this case, during the course of this  
3 investigation, in addition to providing information to  
4 FBI, what else did you do?

5 A. Um, I was infiltrated with the -- with the gang,  
6 and go to meetings, find out more what their, pretty  
7 much, criminal activities were.

8 Q. What was the purpose of going to meetings?

9 A. To find out what they were trying to do around  
10 Virginia or any other place.

11 Q. Have you been paid money as a confidential human  
12 source?

13 A. Yes.

14 Q. Over the past, over ten years, how much money,  
15 approximately, have you been paid?

16 A. About 42,000.

17 Q. What was that money for?

18 A. It was expenses and -- and -- it was just  
19 expenses and just payment that they did. That's pretty  
20 much. I can't recall it right now.

21 Q. Let's start with expenses. What kind of  
22 expenses?

23 A. Um, buying phone cards, sending money to El  
24 Salvador, giving money right here to any other homeboy  
25 that needs money, send money here, send money there,

1 any -- any -- pay dues to the clique, and also pay dues  
2 to the general meeting as well.

3 Q. We'll talk more about some of those activities in  
4 a minute. But focusing for a moment on the money that  
5 you were paid, in addition to that reimbursement for  
6 expenses, were you also paid for services, for  
7 information?

8 A. Yes.

9 Q. Of the approximately 42,000 over the past  
10 ten-plus years, how much of that was for services as  
11 opposed to for expenses?

12 A. It was 15,000 on expenses, and about -- I would  
13 say, 27, 28,000 on service.

14 Q. So, under 30,000, is --

15 A. Yeah.

16 Q. -- your testimony?

17 A. Yeah, under 30,000.

18 Q. So in addition to \$30,000 over the past ten  
19 years, how else have you supported yourself?

20 A. Oh, with work.

21 Q. Sorry?

22 A. I always have my job.

23 Q. Full-time?

24 A. Yes.

25 Q. During the course of your involvement with the

1       FBI, have you received any immigration benefits from  
2       FBI?

3           A. Yes.

4           Q. Tell the jury about that.

5           A. Deferred action.

6           Q. What is -- what is deferred action?

7           A. Deferred action is a temporary protection, they  
8       allow you to be in the country legally.

9           Q. For how long?

10          A. Just for the time that they provide. It could be  
11       a year, could be six months; just the time that they  
12       provide.

13          Q. What's your current immigration status?

14          A. I'm a green card holder.

15          Q. How did you get your green card?

16          A. Through regular immigration proceedings.

17          Q. When you say "regular immigration proceedings,"  
18       is that something that the FBI sponsored you for, or  
19       not?

20          A. No.

21          Q. So, in other words, you got a green card without  
22       the FBI sponsoring you?

23          A. Yes.

24          Q. Did the FBI have any involvement in your attempt  
25       to get the green card?

1       A. They -- they did a letter, but, the letter was  
2 returned, when they send the letter to the person that  
3 needs to be sent. And they didn't get the letter.

4       Q. What do you mean by, it was returned?

5       A. It was some mistake on the -- I believe on the  
6 alien number, and it was returned.

7       Q. We heard some testimony earlier about an S Visa  
8 for you.

9       A. Yes.

10      Q. Did you ever receive an S Visa?

11      A. No.

12      Q. Have you recently been involved in any  
13 deportation proceedings?

14      A. Yes.

15      Q. Very briefly, tell the jury about that.

16      A. It was -- they put in the petition, the  
17 proceeding, you need to go to court, and in front of a  
18 judge. And the judge decide whether you stay or you go.  
19 If you got -- if you have ground. What they -- they put  
20 you in a trial, and see if you're being a good citizen  
21 or not good citizen, and they decide.

22      Q. And, was it before or after those proceedings  
23 that you actually obtained your green card?

24      A. After.

25      Q. Has the government also sent money to move some

1 of your family members for safety reasons?

2 A. Yes.

3 MR. CONTE: Objection, leading, Your Honor.

4 THE COURT: Sustained.

5 BY MS. MARTINEZ:

6 Q. In addition to your expenses and services, do you  
7 know whether the FBI has spent money for other things  
8 related to you, as an FBI confidential human source?

9 A. Just to move my family.

10 Q. What is your understanding of the terms of your  
11 agreement with the FBI?

12 A. Um, I can never be part of any violence at all,  
13 and always, I need to notify if anything, any criminal  
14 activities to them.

15 Q. Before or after the criminal activity?

16 A. Before and after, both.

17 Q. When you hear about possible criminal activity,  
18 what are the procedures you're supposed to follow?

19 A. Um, I need to talk to my handler first.

20 Q. For what purpose?

21 A. To -- to find a better way to approach the  
22 situation without me getting involved with any violent  
23 crimes.

24 Q. Were there times when you were authorized to  
25 engage in nonviolent illegal activity?

1 A. Yes.

2 Q. What kind of illegal activity did the FBI  
3 authorize you to engage in?

4 A. It was buying drugs and buying guns.

5 Q. How many times were you authorized to purchase a  
6 firearm?

7 A. Um, I would say once.

8 Q. Were you given a general authorization to  
9 purchase a firearm at any time, or was it specific to a  
10 particular conduct?

11 A. It was a specific -- it was in a specific time.

12 Q. In that specific time, did you get authority  
13 before or after the transaction?

14 A. Before.

15 Q. And, how did that transaction proceed?

16 A. Um, talked to my handle. They decide what -- how  
17 they're going to do it, when they're going to do it,  
18 provide the money, and I set up the meeting to purchase  
19 the gun.

20 Q. You mentioned narcotics activities.

21 A. Yes.

22 Q. Were you given general authorization to engage in  
23 any sort of narcotics activity?

24 A. No. Just in a specific times.

25 Q. In the specific times, were you given

1 authorization before or after the specific conduct?

2 A. It was before.

3 Q. And what was your instruction with respect to  
4 engaging in specific conduct related to narcotics?

5 A. Just, I was allowed to purchase that time, just  
6 for that reason.

7 Q. If you purchased narcotic activity with the  
8 authority of -- a narcotics with the authority of FBI,  
9 what did you then do with the narcotics?

10 A. Give it to my handler.

11 Q. When?

12 A. Pretty much right away.

13 Q. What type of illegal activity did the FBI not  
14 permit you to engage in?

15 A. Has to do with any -- any violent crime.

16 Q. Mr. Garcia, we've heard a lot of testimony in  
17 this trial about MS-13 and violent activities. How is  
18 it that you were able to be a homeboy in MS-13 and not  
19 commit violent activity?

20 A. You choose -- has to be smart and always talk to  
21 your handler. And, we always come up with a good -- I  
22 will say a good way to avoid or to buy time in order not  
23 to -- to be involved in any criminal activities.

24 Q. What do you mean, "a good way to avoid or buy  
25 time"?

1 A. Know how to talk to them, know how to say no, and  
2 put excuses, and always buying time.

3 Q. Can you give an example?

4 A. I will say, if -- let's say they say, we need to  
5 do something, and we need to go and rob someone.

6 You can come up and tell them, "Look, if we're  
7 going to rob someone and we get caught, then, who's  
8 going to be outside helping the homeboys inside?" Which  
9 would be a little bit smart, and that's buying time.

10 Q. And if you bought time in relation to illegal  
11 activity like robbing someone, what would then happen?

12 A. Um, can you repeat that again, please?

13 Q. Well, you just gave an example about buying  
14 time --

15 A. Uh-huh.

16 Q. -- related to a robbery.

17 A. Uh-huh.

18 Q. What would happen with respect to that planned  
19 robbery if you bought time like that?

20 A. Well, then you buy time, then you come up with  
21 another excuse, another excuse, and you get involved  
22 with something else that has nothing to do with  
23 violence.

24 Q. Were you involved in violent activity --

25 A. Nope.

1 Q. -- with MS-13?

2 A. Nope.

3 Q. Why not?

4 A. Because, I was not allowed to, and, that was not  
5 me.

6 Q. What do you mean, it wasn't you?

7 A. I'm not -- I'm not a -- I don't consider myself a  
8 gang member that goes for violence.

9 Q. Since 2005, have you associated with MS-13?

10 A. Yes.

11 Q. Why?

12 A. Just to find out and try to prevent crimes.

13 Q. How did you try to prevent crimes?

14 A. Infiltrate, go to meetings, find out what they're  
15 up to and what they have done, and always, like I say,  
16 report it to my handler right away.

17 Q. During this investigation, what was your position  
18 within the Silvas clique?

19 A. I was the first word.

20 Q. When did you become the first word?

21 A. Around 2012.

22 Q. How long had you been cooperating with the FBI  
23 when you became the first word?

24 A. About -- about ten years.

25 Q. Did you consult with the FBI before becoming the

1 first word?

2 A. Yes, always.

3 Q. Why?

4 A. Because they need to instruct me what should I  
5 do. I cannot take -- I cannot make decisions on my own.

6 Q. How were you able to gain confidence and trust of  
7 gang members, to rise up to the level of first word?

8 A. Just know how to talk to them and also, um, they  
9 thought that because I been in -- in the clique since  
10 2002, they think that, you know, everything, and they --  
11 you gain respect sometimes that way.

12 And, just pretty much, like I said, know how to  
13 talk to them and I study them, how they are, because not  
14 everybody is the same.

15 Q. Were you required to conduct any particular act  
16 in order to become first word?

17 A. Nope.

18 Q. Were you required to commit an act of violence to  
19 become first word?

20 A. No.

21 Q. How is it that you became first word?

22 A. Actually, the clique -- the clique choose you,  
23 and who they think is active at that time, and they had  
24 know about the gang, and that's how -- well, that's how  
25 Silvas clique choose.

1                   THE COURT: Counsel, we're going to break  
2 for lunch now. 1:00 o'clock.

3                   Ladies and gentlemen, please don't discuss  
4 the case. Don't permit the case to be discussed in your  
5 presence. Leave your notes in the jury deliberation  
6 room.

7                   Resume at 2:00 o'clock. Thank you.

8                   (Court recessed at 12:59 p.m. and reconvened  
9 at 2:05 p.m.)

10                  (Jury not present.)

11                  MR. AQUINO: Judge, just a few seconds.

12                  There was some testimony from the FBI agent,  
13 as well as Junior, that the government was involved in  
14 some -- in -- provided assistance concerning his  
15 immigration status.

16                  Now, it's unclear to me at this point the  
17 full extent or the extent of the government's assistance  
18 to him. And I know the FBI agent said that they  
19 provided deferred action assistance on his case.

20                  But, the witness testified, Junior  
21 specifically, that he has received a green card.

22                  Now, to enter the United States and to  
23 obtain a green card, there's only two ways. It's either  
24 family based or employment based.

25                  And we don't need to get into the weeds on

1 all that, but the point I'm making is, in either of  
2 those applications you have to make a bunch of factual  
3 assertions.

4 Now, we don't have his green card  
5 application. I mentioned this to Ms. Martinez.

6 She indicates that they did not provide him  
7 assistance in his green card application.

8 But, I'm concerned that that is a document  
9 that should be produced to us, in light of the fact that  
10 we know for sure it's in Immigration's possession. He's  
11 testified that he has a green card.

12 And so, I would ask the Court to make some  
13 inquiries on that to the government and, if it is  
14 available, that you order it be produced.

15 THE COURT: Well, did he testify that the  
16 government helped him get a green card, Mr. Aquino?

17 MR. AQUINO: I don't think he -- I don't  
18 think he commented on that. I think he testified that a  
19 letter was written, but it came back.

20 THE COURT: Right.

21 MR. AQUINO: And, it is unclear to me the  
22 extent of the government's assistance.

23 We know for sure, through the FBI agent,  
24 that they were involved in some manner in his remaining  
25 in the United States. As to whether that went further,

1 I'm uncertain.

2 THE COURT: Well, I'm not sure that I  
3 understand your request. The inconsistency is one that  
4 could be cleared up on cross-examination, it seems to  
5 me.

6 Ms. Born was here and she testified she sent  
7 an application to get an S Visa, and he didn't get it.  
8 And this witness has said he has a green card.

9 If you want to inquire how he got it, go  
10 ahead. But I don't have any indication the government  
11 got it for him. Do you?

12 I don't have any indication the government  
13 got it for him.

14 MR. AQUINO: Okay.

15 THE COURT: All right?

16 MR. AQUINO: Well, we'll see. All right.  
17 Thank you.

18 THE COURT: Ready to bring the jury out?  
19 Bring the witness back, yes.

20 (Court and clerk conferring.)

21 THE COURT: I understand.

22 Ms. Martinez?

23 MS. MARTINEZ: Yes, Your Honor?

24 THE COURT: The clerk and I have been  
25 working with the original exhibit list --

1 MS. MARTINEZ: Yes, Your Honor.

2 THE COURT: -- so to try to change now is  
3 just too complicated.

4 MS. MARTINEZ: The only -- and that's fine,  
5 Your Honor.

6 The only thing that we added -- I want to  
7 make sure the witness doesn't walk in while I'm  
8 talking -- was in response to motions and Your Honor's  
9 inquiries and defense counsel inquiries, we provided  
10 on -- over the weekend to defense counsel copies of  
11 translations where there are notations --

12 THE COURT: Okay.

13 MS. MARTINEZ: -- inserted by the CHS. And  
14 we added them in an abundance to caution, to make sure  
15 that everyone has them.

16 That's the only change that has been made to  
17 the exhibit list. We provided those -- those new  
18 exhibits --

19 THE COURT: Okay.

20 MS. MARTINEZ: -- to the Court this morning.  
21 That's the only change.

22 THE COURT: So the numbers are the same,  
23 pretty much.

24 MS. MARTINEZ: All the numbers are the same.

25 THE COURT: All right.

1 MS. MARTINEZ: There's no change to anything  
2 that was already on there. We just added those new  
3 exhibits, and they all have Zs at the end of them.

4 THE COURT: Okay.

5 MS. MARTINEZ: And that's just to make sure  
6 that everyone's clear on what this individual's  
7 involvement was --

8 THE COURT: Okay. Thank you.

9 MS. MARTINEZ: -- with respect to the  
10 translations.

11 THE COURT: Thank you.

12 You can bring the witness back now. Thank  
13 you.

14 (Witness resumed stand.)

15 THE COURT: You can bring our jury out now,  
16 thank you.

17 (Jury present at 2:10 p.m.)

18 You may be seated.

19 Counsel, you may proceed.

20 DIRECT EXAMINATION (Continued)

21 BY MS. MARTINEZ:

22 Q. Before the break, we were discussing your  
23 position in the Silvas clique. How long were you first  
24 word in the Silvas clique?

25 A. About two years.

1       Q. How was it that you were able to be a leader in  
2 the clique, in MS-13, and also at the same time work for  
3 the FBI?

4       A. Like I say, I always -- I always talk to my  
5 handler about any situation on anything that had to do  
6 with the gang. I would approach, how can we -- there is  
7 anything criminal that can -- I can be involved, with  
8 also with my handlers, see what was the best way to come  
9 up with.

10      Q. And when you say "what was the best way to come  
11 up with" it, what do you mean by that?

12      A. My goal was know how to talk to them, and buying  
13 time all the time.

14      Q. Talk to who?

15      A. To -- to the gang members.

16      Q. What do you mean by "how to talk to the gang  
17 members"?

18      A. I would persuade them, you know, be kind of  
19 friend of them, and, you know, sometimes you even agree,  
20 even though you know they're wrong, you kind of have to  
21 agree what they saying, just to, you know, get along  
22 with them.

23      Q. What do you mean by "persuade them"?

24           What would you try to persuade them of?

25      A. For anything. So I always try to talk to them,

1 try to call them, to find out anything, anything like --  
2 like I say, anything that they have done, or any thing  
3 that is about to happen.

4 Q. What was the purpose of finding out about what  
5 they've done?

6 A. To give information to my handler.

7 Q. What was the purpose of finding out about  
8 something that might be about to happen?

9 A. To prevent any crime, to see if they had commit  
10 anything big, or most of the time, like prevent any  
11 crime.

12 Q. Were there instances where you heard in advance  
13 about crimes?

14 A. Yeah. I would say yes.

15 Q. What would you do about if you heard in advance  
16 about a possible crime?

17 A. Talk to my handler right away.

18 Q. Now, as the clique leader, during the two years  
19 that you were a leader of the Silvas, what relationship,  
20 if any, did you have with other cliques in MS-13?

21 A. We talk to them, pretty much through all the  
22 first words of the other cliques and all their homeboys.

23 Q. During that time period, what were the other  
24 cliques in the Northern Virginia area?

25 A. It were -- it was PVLS, PLS, ULS, GLS, CGLS, and

1 other cliques. I can't recall the rest of them.

2 Q. Were there ever meetings that involved members of  
3 the different cliques?

4 A. Yes.

5 Q. Were there times when you went to meetings  
6 involving members of cliques other than your own?

7 A. Yes.

8 Q. Who would attend these meetings involving  
9 multiple cliques?

10 A. The first words of each clique.

11 Q. How often were these meetings held?

12 A. Just depend. It could be few hours, could be an  
13 hour, could be more.

14 Q. And how often did they happen?

15 A. It happened, could be every -- every month, every  
16 couple months. It just depend how safe they felt to go  
17 to the place.

18 Q. Where did the meetings occur?

19 A. In -- always happen, most of the meetings, in  
20 hotels.

21 Q. At hotels?

22 A. Yes.

23 Q. What kinds of hotels?

24 A. Regular hotels.

25 Q. Where?

1 A. Woodbridge.

2 Q. At meetings that you attended with members of the  
3 other cliques --

4 A. Yes.

5 Q. -- were there ever meetings with members of the  
6 PVLS clique?

7 A. Yes.

8 Q. And what is the full name of PVLS?

9 A. Park View Locos Salvatruchos.

10 Q. Who were the members of PVLS that attended  
11 meetings that you attended as well?

12 A. It was Peluca from PVLS, Lil Poison from PVLS,  
13 Lil Payaso from PVLS, Demente from PVLS.

14 Q. Anyone else?

15 A. No, I can't -- not that I remember.

16 Q. Let's start with Peluca.

17 A. Yes.

18 Q. How long have you known the individual called  
19 Peluca?

20 A. I know him by phone, and personally I saw him  
21 couple of times.

22 Q. Do you know him by any other names other than  
23 Peluca?

24 A. Peluca, Peluguin, Greñas.

25 Q. Have you met him in person?

1 A. Yes.

2 Q. How many times?

3 A. I would say more than four times, five times.

4 Q. Have you ever spoken to Peluca, Greñas, on the  
5 phone?

6 A. Yes.

7 Q. How many times?

8 A. Many times.

9 Q. Over the course of what period?

10 A. Over the course of, probably, 2012 until 2014.

11 Q. Do you see Greñas, Peluca, here in court today?

12 A. Yes.

13 Q. Would you please identify him by describing where  
14 he's sitting and an item of clothing that he is wearing.

15 A. He's wearing kind of blue shirt, right in the  
16 middle, right in front of me.

17 Q. Would you describe which row of the these tables  
18 he's sitting in.

19 A. First row.

20 Q. And, just to make sure that the record is clear,  
21 starting from where I am, how many people over is he,  
22 not including myself?

23 A. Just one.

24 MS. MARTINEZ: Your Honor, may the record  
25 reflect that the witness has properly identified Jose

1 Lopez Torres.

2 THE COURT: So noted.

3 BY MS. MARTINEZ:

4 Q. You also mentioned someone named Lil Payaso; is  
5 that right?

6 A. Yes.

7 Q. Do you know Lil Payaso by any other names?

8 A. Just by Lil Paya, kind of that word, the same  
9 name.

10 Q. How long have you known Lil Payaso?

11 A. The same, almost the same time as Peluca.

12 Q. How many times -- did you ever meet Lil Payaso in  
13 person?

14 A. Yes.

15 Q. How many times?

16 A. More than five, six times.

17 Q. Have you spoken to Lil Payaso on the phone?

18 A. Yes.

19 Q. How many times?

20 A. I would say more than 15 times.

21 Q. Over what time period?

22 A. 2012, 2014.

23 Q. Do you see Lil Payaso here in court today?

24 A. Yes.

25 Q. Would you please identify him by describing

1 specifically where he's sitting and an item of clothing  
2 that he's wearing.

3 A. She's right -- he's right behind. He's wearing a  
4 yellow shirt.

5 MS. MARTINEZ: Your Honor, may the record  
6 reflect that the witness has identified Omar Dejesus  
7 Castillo.

8 THE COURT: So noted.

9 BY MS. MARTINEZ:

10 Q. You mentioned someone named Lil Poison.

11 A. Yes.

12 Q. Do you know Lil Poison by any other names?

13 A. Um, just Lil Poison; not that I remember another  
14 name.

15 Q. How long have you known Lil Poison?

16 A. About the same time.

17 Q. How many times have you met him in person?

18 A. Like four, four or six times.

19 Q. Have you spoken to him on the phone?

20 A. Yes.

21 Q. How often?

22 A. Every -- every week. Almost, I would say every  
23 few days at a time.

24 Q. Over what time period?

25 A. 2014 to -- I mean, 2012 to 2014.

1 Q. Do you see Lil Poison in court today?

2 A. No, I can't see -- I don't -- I can't see right  
3 now. This is --

4 THE WITNESS: Can I stand?

5 THE COURT: Yes, you can stand up.

6 THE WITNESS: I can't see him.

7 MS. MARTINEZ: That's fine.

8 BY MS. MARTINEZ:

9 Q. You mentioned someone named Demente.

10 A. Yes.

11 Q. How long have you known Demente?

12 A. I know him since 2012.

13 Q. Have you met him in person?

14 A. Yes.

15 Q. How often?

16 A. Probably couple of times, I saw him.

17 Q. Have you also spoken to him on the phone?

18 A. Yes.

19 Q. How often? How many times?

20 A. Probably ten times.

21 Q. Over what time period?

22 A. 2012 to -- 2012, I would say.

23 MS. MARTINEZ: Your Honor, with the help of  
24 the court security officer, I'd like to show the witness  
25 what has been marked for identification purposes as

1 Government's Exhibit 75.

2 THE COURT: All right.

3 MR. CONTE: Your Honor, may we approach?

4 Court's indulgence.

5 (Pause.)

6 MR. CONTE: I will withdraw my objection,  
7 then.

8 THE WITNESS: Yes, that's him. That's  
9 Demente.

10 MS. MARTINEZ: Your Honor, permission to  
11 move Government's Exhibit 75 into evidence.

12 THE COURT: Received.

13 BY MS. MARTINEZ:

14 Q. When you attended these meetings that you  
15 referenced with other clique members, would you inform  
16 the FBI of the meetings?

17 A. Yes.

18 Q. What would the FBI do to protect you during these  
19 meetings?

20 A. Um, I was always -- they were always around the  
21 meetings, and tell me what I can do and what I cannot  
22 do.

23 Q. When you say around during the meetings, were  
24 they in the meetings with you?

25 A. No.

1 Q. Where were they?

2 A. They were outside in the parking lots.

3 Q. Were there times when you also were able to  
4 record meetings?

5 A. Yes.

6 Q. How did you do that?

7 A. With the device, electronic device.

8 Q. And what was the purpose of recording meetings?

9 A. To record what they saying.

10 MS. MARTINEZ: Your Honor, with the help of  
11 the court security officer, I'd like to show the witness  
12 what has been previously marked for identification  
13 purposes as Government's Exhibit 80-A and 80-B.

14 BY MS. MARTINEZ:

15 Q. Do you recognize those pictures?

16 A. No, I cannot recall that one.

17 Q. Okay. That's 80-A?

18 A. Yes, that's 80-A.

19 Q. How about 80-B?

20 A. Yes, that's, um, Leopard from PVLS.

21 Q. Do you know what was happening in that picture?

22 A. Nope.

23 Q. Let's talk about Leopard --

24 MS. MARTINEZ: Well, Your Honor, permission  
25 to move in Government's Exhibit 80-B, is the one that he

1 did recognize.

2 THE COURT: Received.

3 MS. MARTINEZ: May we publish for the jury?

4 THE COURT: Yes.

5 MS. MARTINEZ: Wait -- well, may we publish  
6 for the jury.

7 BY MS. MARTINEZ:

8 Q. I'd like to turn your attention now to  
9 Government's Exhibits 81-A, B, and C. Do you recognize  
10 these pictures?

11 A. Yes.

12 Q. What was happening in these pictures?

13 A. It was a meeting, general meeting.

14 Q. What do you mean by a "general meeting"?

15 A. All the first words of the clique attend to the  
16 meeting.

17 Q. Where was this general meeting?

18 A. Woodbridge.

19 Q. Do you remember approximately when?

20 A. I would say around January.

21 Q. Where in Woodbridge was the meeting?

22 A. In a hotel room; hotel in Woodbridge.

23 MS. MARTINEZ: Your Honor, we would move in  
24 Government's Exhibits 81-A, 81-B and 81-C.

25 THE COURT: Received.

1 MS. MARTINEZ: May we publish for the jury?

2 THE COURT: Yes. 81-A, B and C.

3 MS. MARTINEZ: Starting with 81-A.

4 BY MS. MARTINEZ:

5 Q. Who is this individual?

6 A. That's Hansel, a *chequeo* from Silvas.

7 Q. What do you mean by "*chequeo*"?

8 A. He's not a full gang member.

9 Q. You testified earlier that at general meetings,  
10 only the leaders would go to the meetings.

11 A. Yes.

12 Q. Do you know why a *chequeo* was there at the  
13 meeting?

14 A. He was there just to look out.

15 Q. What do you mean by "look out"?

16 A. See if there is any police around the place.

17 Q. Was he inside the meeting?

18 A. No.

19 Q. Was that something that happened commonly?

20 A. Nope.

21 Q. What was the role of *chequeos* with respect to  
22 meetings?

23 A. Just be outside and look out and let us know if  
24 they see a police around.

25 Q. What's the purpose of looking out for police?

1 A. Just to let us know if the police is there, so we  
2 can pretty much leave.

3 Q. Moving on to 81-B.

4 Starting with the individual on the far left, who  
5 is that?

6 A. That would be Estone from Silvas, a full gang  
7 member.

8 Q. How about the individual in the middle, in the  
9 white shirt?

10 A. That's Peluca from PVLS.

11 Q. Is that the same Peluca, Greñas, you identified  
12 in court?

13 A. Yes, he is.

14 Q. How about the individual on the far right?

15 A. That would be Skinny from PVLS.

16 Q. Who is Skinny?

17 A. He's a member of PVLS clique.

18 Q. How long -- do you know Skinny?

19 A. Yes.

20 Q. How long have you known Skinny?

21 A. Probably 2012 to 2013.

22 Q. Have you seen him in person?

23 A. Yes.

24 Q. Have you spoken to him on the phone?

25 A. Yes.

1 Q. How often?

2 A. I spoke to him about four or five times.

3 Q. If you could take a look at Government's  
4 Exhibit 77.

5 A. That's Skinny from PVLS.

6 MS. MARTINEZ: Your Honor, move to admit  
7 Government's Exhibit 77 into evidence.

8 THE COURT: Received.

9 MS. MARTINEZ: May we publish for the jury?

10 THE COURT: Yes.

11 BY MS. MARTINEZ:

12 Q. I'll return your attention now to back to 81-C,  
13 which was already admitted.

14 MS. MARTINEZ: May we publish, Your Honor?

15 THE COURT: Yes.

16 BY MS. MARTINEZ:

17 Q. Who were the individuals in this picture?

18 A. That would be me, and Gato from ULS. I cannot  
19 recall the rest -- the other two.

20 Q. Who is Gato?

21 A. He's a gang member from ULS clique.

22 Q. If you could take a look now at what's been  
23 marked for identification purposes as  
24 Government's Exhibit 82-A, all the way through 82-G.

25 A. That would be me, Joker from --

1 Q. Before you say that, if you could look at  
2 Government's Exhibit 82-A through 82-G and see if you  
3 recognize the pictures.

4 A. 82-A and what else?

5 Q. 82-A, 82-B, 82-C, 82-D, 82-E, 82-F, and 82-G.

6 A. Okay.

7 Q. Do you recognize these pictures?

8 A. Yes.

9 Q. What was going on in these pictures?

10 A. It was a general meeting.

11 Q. Just like the other general meeting?

12 A. Yes.

13 Q. Was this a different general meeting?

14 A. No, it was regular general meeting.

15 Q. Was it a --

16 A. It was a different one.

17 Q. Different from the picture we saw before?

18 A. Yes.

19 Q. Where was this general meeting?

20 A. Woodbridge.

21 Q. Where in Woodbridge?

22 A. A regular hotel in Woodbridge.

23 MS. MARTINEZ: Your Honor, the government  
24 moves in Government's Exhibits 82-A through 82-G,  
25 inclusive of the letters in between.

1 THE COURT: Received.

2 MS. MARTINEZ: May we publish?

3 THE COURT: Yes.

4 BY MS. MARTINEZ:

5 Q. Starting with 82-C, please. Who are the  
6 individuals in this picture?

7 A. That would be me, Little -- Lil Payaso from PVLS;  
8 Uzi, a *chequeo* from Silvas; Hansel, a *chequeo* from  
9 Silvas; and Estone, a full gang member from Silvas.

10 Q. Which individual in the picture is Lil Payaso  
11 from PVLS?

12 A. The one with the stripes, pretty much.

13 Q. There are two individuals with striped shirts.  
14 Is it the individual --

15 A. The gray --

16 Q. -- to the left or the --

17 A. The guy who has the gray stripe, the gray shirt  
18 with stripes.

19 Q. And, just to make sure that the record's clear,  
20 there are two individuals with stripes. Is Lil Payaso  
21 the one on the left or the one on the right?

22 A. On the left.

23 Q. Now, you mentioned that there were some *chequeos*  
24 in this picture. What was the role of the *chequeos* at  
25 this general meeting?

1 A. The same, just looking for if there's any cops  
2 around.

3 Q. What was the role of Lil Payaso at this meeting?

4 A. He was one of the first word of PVLS.

5 Q. Was he inside the meeting?

6 A. Yes.

7 MS. MARTINEZ: May we publish 82-D, Your  
8 Honor?

9 THE COURT: Yes.

10 BY MS. MARTINEZ:

11 Q. Do you know who this individual is?

12 A. Yes.

13 Q. Who?

14 A. Lil Poison from PVLS.

15 Q. What was Little Poison's role at this general  
16 meeting?

17 A. Um, he was a second word of PVLS.

18 Q. Did he attend the meeting?

19 A. Yes, he did.

20 Q. 82-E. Who are these individuals?

21 A. Um, it's Lil Poison from PVLS.

22 The one with wide stripe and blue stripes, that  
23 would be Uzi, a *chequeo* from Silvas. Next to him is  
24 Hansel, a *chequeo* from Silva. Next to Hansel is Estone,  
25 a homeboy from Silvas. And that would be me.

1 Q. Let's start with you. Where in this picture do  
2 you appear?

3 A. I'm pretty much wearing a black jacket. You  
4 can't see my face.

5 Q. The individual all the way to the right of the  
6 picture?

7 A. Yes.

8 Q. Now, Lil Poison, starting from the left of  
9 picture, can you count how many over he is?

10 A. Two.

11 Q. What is he wearing?

12 A. He's wearing a black shirt and a hat, backwards.

13 Q. Moving to 82-F. Who are these individuals?

14 A. That would be Lil Payaso from PVLS, Lil Poison  
15 from PVLS. I can't recall the other two.

16 Q. Starting with Lil Payaso, where in the picture is  
17 Lil Payaso?

18 A. In the far left, wearing a gray shirt with  
19 stripes.

20 Q. The person all the way to the far left of the  
21 picture does not have a gray shirt with stripes. Is  
22 that Lil Payaso, or is he somewhere else in the picture?

23 A. No. That's Lil Payaso.

24 Q. Can you point to where Lil Payaso is in this  
25 picture?

1 A. It's right here.

2 MS. MARTINEZ: Your Honor, for the record,  
3 in this picture there are four individuals, and the  
4 individual that the witness just pointed to and made a  
5 note on the screen is the second individual from the  
6 left.

7 THE COURT: So noted.

8 BY MS. MARTINEZ:

9 Q. Would you point to Lil Poison, please.

10 A. (Indicating.)

11 MS. MARTINEZ: Your Honor, for the record,  
12 the witness has pointed to an individual who -- who  
13 appears to be the second from the right, and in front of  
14 two individuals, wearing a hat.

15 THE COURT: All right.

16 BY MS. MARTINEZ:

17 Q. 82-G. Is this from that same meeting?

18 A. Yes.

19 Q. Who do you recognize in this picture?

20 A. Lil Poison from PVLS. Lil Payaso from PVLS.

21 Q. Would you please point to Lil Poison on the  
22 screen?

23 A. (Indicating.)

24 MS. MARTINEZ: Your Honor, for the record,  
25 the witness has pointed and made a mark on the screen to

1           the individual furthest to the right in the picture.

2           THE COURT: All right. So noted.

3           BY MS. MARTINEZ:

4           Q. Would you please point to Lil Payaso?

5           A. (Indicating.)

6           MS. MARTINEZ: For the record, Your Honor,  
7           the witness has pointed and made a mark on the screen to  
8           the individual four from the right side of the picture.

9           THE COURT: So noted.

10          BY MS. MARTINEZ:

11          Q. Would you please turn your attention to what's  
12          been marked for identification purposes as Government's  
13          Exhibits 83-A, 83-B, 83-C, 83-D, and 83-E.

14          A. Okay.

15          Q. Do you recognize these pictures?

16          A. Yes.

17          Q. What's happening in these pictures?

18          A. This is a different general meeting.

19          Q. Same general meeting as the other one, or a  
20          different one?

21          A. Different one.

22          Q. Is it the same meeting within all these pictures,  
23          the 83 series?

24          A. What do you mean, like --

25          Q. Do all of the 83 series depict the same meeting?

1 A. Yes.

2 MS. MARTINEZ: Your Honor, permission to  
3 move into evidence Government's Exhibit 83-A through  
4 83-E, inclusive.

5 THE COURT: Received.

6 MS. MARTINEZ: May we publish?

7 THE COURT: Yes.

8 BY MS. MARTINEZ:

9 Q. Let's start with 83-C. Who are these  
10 individuals?

11 A. That's Lil Poison from PVLS and Lil Payaso from  
12 PVLS.

13 Q. Where was this gang meeting?

14 A. It was in Lorton, Virginia.

15 Q. What were the role -- what was the role of Lil  
16 Payaso at this meeting?

17 A. He was also the first word to attend the general  
18 meeting, representing his clique.

19 Q. What was the role of Lil Poison at the meeting?

20 A. He was also second -- he was the second word on  
21 the meeting -- on the clique.

22 Q. Which individual in the picture is Lil Payaso?

23 A. He's in the left side, wearing a, um, with the  
24 white shirt and stripes.

25 Q. And there are only two pictures -- two

1 individuals in this picture, correct?

2 A. Yes.

3 Q. 83-D. Who is this?

4 A. That's Lil Payaso from PVLS.

5 Q. 83-E. Who are these individuals?

6 A. That's Lil Poison from PVLS, and that was -- the  
7 other guy is a *chequeo*, is actually a *paro* from PVLS.

8 Q. Which individual is Lil Poison?

9 A. The one who's wearing a black shirt and a hat  
10 backwards.

11 Q. Is he to the left or to the right of the two  
12 individuals?

13 A. To the left.

14 Q. And, you said that the other individual is a  
15 *paro*?

16 A. Yes.

17 Q. What is a *paro*?

18 A. A *paro* means they're -- they're just helping the  
19 gang member around, for rides; or if anything happen,  
20 they will let them know. They're not full -- they're  
21 not one to be a part of the gang in full capacity. They  
22 just want to, you know, get along with them.

23 Q. What was the role of a *paro* like this individual  
24 at a general meeting?

25 A. Giving a ride to Lil Poison.

1 Q. Was that what happened in this case, in this  
2 instance?

3 A. I'm assuming, yes.

4 MR. CONTE: Objection.

5 THE COURT: Sustained to assumptions.

6 BY MS. MARTINEZ:

7 Q. In addition to the individuals we've already  
8 discussed, were you acquainted with someone whose gang  
9 name was Lil Tuner?

10 A. Yes.

11 Q. Who was Lil Tuner?

12 A. He was a member of PVLS.

13 Q. How long did you know Lil Tuner?

14 A. About the same time, from 2012 to 2014.

15 Q. Were there occasions when you met him in person?

16 A. Yes.

17 Q. About how many times?

18 A. One time.

19 Q. Did you know Lil Tuner by any name other than Lil  
20 Tuner?

21 A. Lil Pesadilla.

22 Q. In addition to meeting him in person, did you  
23 ever speak to him on the phone?

24 A. Yes.

25 Q. About how many times?

1 A. More than 50, I would say.

2 Q. During what period of time?

3 A. 2012, 2014.

4 Q. Do you see Lil Tuner, Lil Pesadilla, here in  
5 court today?

6 A. Yes.

7 Q. Would you identify him based on where he's  
8 sitting, specifically, and something that he's wearing.

9 A. He's wearing kind of a purple -- a purple shirt.

10 Q. Which row of tables is he seated at?

11 A. The second one.

12 MS. MARTINEZ: Your Honor, may the record  
13 reflect that the witness has identified Defendant Alvin  
14 Gaitan Benitez?

15 THE COURT: So noted.

16 BY MS. MARTINEZ:

17 Q. Were you also acquainted with someone whose gang  
18 name was Leopard?

19 A. Yes.

20 Q. How did you know Leopard?

21 A. I know him by phone.

22 Q. And who was Leopard?

23 A. He was a member of from PVLS clique.

24 Q. Were there times that you met Leopard in person?

25 A. Yes.

1 Q. How many times?

2 A. Um, I'd say, one -- a couple of times.

3 Q. How many times did you speak to Leopardo on the  
4 phone?

5 A. Um, more than 50, 40 times.

6 Q. Over what time period?

7 A. 2012 to 2014.

8 Q. Do you see Leopardo in court today?

9 A. Yes.

10 Q. Would you identify him based on where he's  
11 sitting, specifically, and an item of clothing that he's  
12 wearing?

13 A. He's on the third row, wearing a white shirt.

14 MS. MARTINEZ: Your Honor, may the record  
15 reflect that the defendant has identified -- excuse  
16 me -- the witness has identified Defendant Christian  
17 Lemus Cerna.

18 THE COURT: So noted.

19 BY MS. MARTINEZ:

20 Q. Did you know Leopardo by any other name, other  
21 than Leopardo?

22 A. Leopardo, Gatito. That's pretty much it.

23 Q. In addition to these meetings that we've  
24 discussed, how did you keep in touch with other gang  
25 members?

1 A. By phone.

2 Q. During the course of this investigation, what  
3 phone did you use?

4 A. A phone the FBI provide.

5 Q. Why did the FBI provide you a phone?

6 A. So, that way I cannot use my personal phone, and  
7 record -- and also have that phone specific just for the  
8 gangs.

9 Q. What was the purpose of having a phone specific  
10 for the gangs?

11 A. To record every in and out call.

12 Q. How were the conversations recorded?

13 A. On the phone, a device.

14 Q. Were you able to control whether or not it  
15 recorded?

16 A. No.

17 Q. How were you instructed to use that phone?

18 A. Just to gang -- just to record the gang  
19 activities. That's all.

20 Q. Other than that phone, did you use any other  
21 phones during that time period to talk to gang members?

22 A. No.

23 Q. What was your strategy to get gang members to  
24 talk to you about criminal activity?

25 A. Like I said, just know how to talk to them, like,

1 persuade them, agree with them, even though, you know,  
2 they're completely wrong, just, you know, take sides  
3 with them, and, that's how, little by little, you earn  
4 their -- their trust.

5 Q. What do you mean by you would agree with them  
6 even though they're completely wrong?

7 A. Let's say, like, they -- they talking crazy  
8 stuff, that you know they're wrong. I mean, you cannot  
9 say anything to them. You say, "Oh yeah, that's, that's  
10 good, that's" -- or just agree with them, pretty much  
11 whatever they say.

12 Q. What kind of crazy stuff?

13 A. Like, they say, they -- say, they talk about,  
14 let's say, a murder, and, you know, you just hear them,  
15 but you don't say anything, "You shouldn't do that," or,  
16 you -- you know, "Why you did that?" Stop asking  
17 questions that you shouldn't.

18 Q. Why didn't you ask questions like that?

19 A. Because, I mean, they're -- they're also smart.  
20 They will -- they will know why you asking so many  
21 questions that way. So, that mean that, you -- they  
22 will think there's something -- something fishy with  
23 you.

24 Q. From the fall of 2013 through the summer of 2014,  
25 how many recordings of PVLS gang members do you estimate

1 you made for the FBI?

2 A. Hundreds.

3 Q. How long were these recorded calls?

4 A. Just depend. Could be seconds, minutes, hours.

5 Q. What language did you generally speak to these  
6 gang members in?

7 A. Spanish.

8 Q. What, if anything, is different about the way  
9 that MS-13 gang members speak in Spanish?

10 A. The only difference will be, they use a word and  
11 they use it as a backwards, but it means the same thing.  
12 It's just like a code for them.

13 Q. Were you able to understand code when it was  
14 used?

15 A. Yes.

16 Q. How?

17 A. Because, like I said, they use it as a backwards,  
18 and then you know what they mean.

19 Q. How long have you had experience listening to  
20 that kind of code?

21 A. Since I was -- since I been providing all the  
22 information to the FBI.

23 Q. Over ten years?

24 A. Yes.

25 MS. MARTINEZ: Your Honor, with the help of

1 the court security officer, I'd like to show the witness  
2 Government's Exhibits 7-A through 12-A, and 14-A through  
3 23-A.

4 Mr. Toliver, these should be discs.

5 BY MS. MARTINEZ:

6 Q. Do you recognize Government's Exhibit 7-A through  
7 12-A and 14-A through 23-A?

8 A. Yes.

9 Q. What are they?

10 A. They are CDs.

11 Q. Have you listened to these CDs?

12 A. Yes.

13 Q. What do they contain?

14 A. All the calls -- most of the calls that I record  
15 with the gangs.

16 Q. Do they contain every single call that you  
17 recorded, or just some?

18 A. Some.

19 Q. Did you listen to these particular CDs?

20 A. Yes.

21 Q. How do you know that?

22 A. Because I listen to them over and over, many  
23 weeks ago.

24 Q. Do you see anything on the discs that allows you  
25 to identify these discs as the ones that you listened

1 to?

2 A. Yes, my initials.

3 Q. On each disc?

4 A. Yes.

5 Q. Do you recall -- when you listen to these  
6 recordings, do you recall participating in the  
7 conversations?

8 A. Yes.

9 Q. Were you able to identify the voices of the other  
10 people participating in the conversations?

11 A. Yes, some of them.

12 Q. How were you able to identify voices?

13 A. Because I came to know them face to face, and I  
14 used to talk to them every other day, I would say, or  
15 every day.

16 Q. Were there instances, in these recordings or  
17 others, where individuals would identify themselves by  
18 name?

19 A. Yes.

20 MS. MARTINEZ: Your Honor, government would  
21 move into evidence Government's Exhibit 7-A through  
22 12-A, inclusive, and 14-A through 23-A, inclusive.

23 THE COURT: 7-A through 12-A?

24 MS. MARTINEZ: Yes, Your Honor.

25 THE COURT: And 23-A, inclusive?

1 MS. MARTINEZ: Just for the record, Your  
2 Honor, 7-A through 12-A, inclusive, so, 7-A, 8-A --

3 THE COURT: Right, right.

4 MS. MARTINEZ: Right. And then also 14-A  
5 through 23-A, inclusive.

6 THE COURT: All right. So, 7-A to 12-A, and  
7 14-A to 23-A will be received.

8 MS. MARTINEZ: Yes, Your Honor. There is no  
9 13-A, for the record.

10 THE COURT: All right.

11 BY MS. MARTINEZ:

12 Q. When you listened to these recordings on these  
13 discs, were you able to review English translations?

14 A. Yes.

15 Q. When was that review?

16 A. When I was listening to the conversations.

17 Q. Approximately how long ago was it?

18 A. Three or four weeks ago.

19 Q. How long did it take you to review all of these  
20 recordings?

21 A. Just depends, because some of the calls are  
22 really long, some of them are short. But I would say  
23 all day.

24 Q. How many days did you spend working on that?

25 A. A lot of days.

1       Q. With the help of the court security officer, I  
2 would like to show you Government's Exhibits 7-A-1  
3 through 12-A-1, inclusive, And 14-A-1 through 23-A-1,  
4 inclusive.

5                  You may need to flip through the binder just to  
6 see all of the exhibits there.

7       A. 7-A to what?

8       Q. 7-A-1, 8-A-1, all the way up through 12.

9       A. Okay.

10      Q. And then starting with 14 -- there's no 13.  
11 Starting with 14-A-1, all the way up to 23-A-1.  
12 Basically, 7 through 23, because there's no 13.

13      A. Okay.

14      Q. Do you recognize these exhibits?

15      A. Yes.

16      Q. What are they?

17      A. It's DVDs, phone calls that I record.

18      Q. So, I actually wanted you to look at the A-1s,  
19 which should be paper. Were you able to do that?

20      A. A-1.

21      Q. So 7-A-1, 8-A-1, all the way up through 23-A-1.

22 Sorry for the confusion.

23      A. 7-A-1, right?

24      Q. Yes.

25                  Is 7-A-1 paper? Is it a paper exhibit?

1            You can take them out of the sleeves, too, so you  
2 can see them if you need to.

3        A. To what number?

4        Q. Starting with 7-A-1 --

5        A. Uh-huh.

6        Q. -- all the way through 23-A-1, each one. There's  
7 no 13.

8        A. Okay.

9        Q. Do you recognize these exhibits?

10      A. Yes.

11      Q. What are they?

12      A. That's a -- CDs that contain all the record that  
13 I did.

14      Q. So, one more time. I wanted you to look at the  
15 paper, not the disc.

16      A. Okay.

17      Q. Were you able to do that when you were flipping  
18 through, or were you looking at the discs?

19      A. I was looking at the discs.

20      Q. Okay. Would you please look at -- so the discs  
21 are the As?

22      A. Yes.

23      Q. And then there's paper, and the paper are A-1; so  
24 starting with 7-A-1.

25      A. Yes.

1 Q. And then continuing to 8-A-1 -- and they should  
2 all be paper -- all the way through 23-A-1. Could you  
3 look at each of those paper exhibits?

4 Sorry to make you keep flipping through that  
5 binder.

6 And just so you know, sir, I think the way that  
7 they're packaged up there for you is there's a plastic  
8 sleeve. The disc is on top and the paper is behind it.  
9 So it's the paper that I actually want you to review.

10 And if you need to, you can take it out of the  
11 plastic sleeve. So, it's coupled right there with the  
12 disc, but I'm talking about the paper.

13 A. So, I have to remove all of them, or one by one?

14 Q. My question is going to be, after you've had a  
15 chance to look at each of these, whether you recognize  
16 them.

17 A. Yes.

18 Q. Have you had a chance to -- I know you flipped  
19 through there several times, but do you recognize  
20 Government's Exhibit 7-A-1, through 12-A-1, inclusive,  
21 and 14-A-1 through 23-A-1, inclusive?

22 A. Yes.

23 Q. What are they?

24 A. They are conversations that I had with gang  
25 members.

- 1 Q. And, the A-1s, what type of exhibit is it?
- 2 A. 7-A-1?
- 3 Q. What is it that you're looking at?
- 4 Is it a disc or is it paper?
- 5 A. It's a paper.
- 6 Q. All right. What is that paper?
- 7 A. It's -- contains my name and the name of the gang
- 8 members that I talked to that day.
- 9 Q. Go ahead and look through the paper. Is it
- 10 something that you've seen before?
- 11 A. Yes, it's the conversation.
- 12 Q. What language is that paper in?
- 13 A. English.
- 14 Q. Have you reviewed that paper?
- 15 A. Yes.
- 16 Q. Is it a translation of something?
- 17 A. Yes.
- 18 Q. When did you review it?
- 19 A. Three, four weeks ago.
- 20 Q. What were you doing when you were reviewing that
- 21 English translation?
- 22 A. I was listening to the Spanish, and at the same
- 23 time reading in English.
- 24 Q. Were you able to review each one of those English
- 25 translations, 7-A-1 through 12-A 1, and 14-A 1 through

1           23-A-1?

2           A. Yes, I did.

3           Q. What were you doing as you reviewed each and  
4           every one of those English translations?

5           A. Listen to the Spanish conversation that I had  
6           with the gang members, and also at the same time reading  
7           the exhibit.

8           Q. Now, those exhibits that you have there, do they  
9           identify speakers?

10           A. Are there --

11           A. Yes.

12           Q. And, do those identities of speakers match what  
13           you were able to determine, based on voice  
14           identifications or the ways that the speaker identified  
15           themselves?

16           A. Yes.

17           MS. MARTINEZ: We would move now, in,  
18           Government's Exhibit 7-A11 through 12-A-1, inclusive,  
19           and 14-A-1 through 23-A-1, inclusive.

20           THE COURT: 7-A-1 through 12-A 1, and 14-A-1  
21           to 23-A-1, will be received.

22           BY MS. MARTINEZ:

23           Q. When you were reviewing the Spanish language  
24           recordings and the English translations, did you  
25           generally agree or disagree with the translations?

1       A. Most of the time, I agree. There were minors  
2 that I disagree, really minor translation.

3       Q. When you disagreed with a minor translation, what  
4 did you do?

5       A. I talked to the FBI agent and I told them what --  
6 what that -- what they trying to mean by that.

7       Q. And what did you observe happen when you informed  
8 an agent that you disagreed with a particular piece of  
9 the translation?

10      A. He, just to type it at the side of the word that  
11 was translate, what I think it might be.

12      Q. Have you had an opportunity to review some  
13 translations that contain these corrections that you're  
14 referencing?

15      A. Yes.

16                  MS. MARTINEZ: With the help of the court  
17 security officer, I'd like to show the witness what has  
18 been marked as Government's Exhibit 7-Z, 8-Z, 10-Z,  
19 11-Z, 12-Z, 15-Z, and 18-Z.

20 BY MS. MARTINEZ:

21      Q. What are these exhibits?

22      A. Conversations that I have with the gang.

23      Q. Do these versions include notes about your  
24 corrections?

25      A. Yes.

1 Q. Were there many corrections?

2 A. Not that many.

3 Q. Were these the only corrections?

4 A. Yes.

5 Q. Were there also translations where you had no  
6 corrections to make?

7 A. Yes.

8 MS. MARTINEZ: Your Honor, we would move in  
9 now Government's Exhibits 7-Z, 8-Z, 10-Z, 11-Z, 12-Z,  
10 15-Z, and 18-Z.

11 THE COURT: 7-Z, 8-Z, 10-Z, 11-Z, 12-Z,  
12 15-Z, 18-Z will be received.

13 MS. MARTINEZ: Your Honor, may we publish  
14 Government's Exhibit 12-Z?

15 THE COURT: Yes.

16 MS. MARTINEZ: We will go to page 25.

17 BY MS. MARTINEZ:

18 Q. On page 25, do you see towards the bottom of the  
19 screen where "melon" is crossed out and it says "onion,"  
20 and that's in red?

21 A. Yes.

22 Q. Is that an example of a correction that you made?

23 A. Yes.

24 Q. Is that a typical example of the type of  
25 corrections you suggested in these translations?

1 A. Yes.

2 Q. Are there any other corrections on this page of  
3 this translation?

4 A. No.

5 Q. In this entire multipage translation, were there  
6 any other corrections that you offered?

7 A. Not on this page.

8 Q. How about on the other pages?

9 A. Not that I see.

10 MS. MARTINEZ: Your Honor, permission to  
11 publish Government's Exhibit 7-A-1.

12 THE COURT: You may publish it.

13 BY MS. MARTINEZ:

14 Q. What was the date of this recorded conversation?

15 MS. AUSTIN: Your Honor, may we approach?

16 THE COURT: Okay.

17 THE WITNESS: It was January 1st.

18 THE COURT: Just a second. Just a second.

19 You wanted to come to sidebar; is that  
20 right?

21 MS. AUSTIN: Yes.

22 THE COURT: All right.

23 (Thereupon, sidebar conference held as  
24 follows:)

25 MS. AUSTIN: Your Honor, I looked up at the

1 screen and what's being shown has "verbatim translation"  
2 written on it.

3 MS. MARTINEZ: Your Honor, it's possible  
4 that our paralegal, although she redacted it from all  
5 the versions that the witness currently has, they may  
6 have not have redacted it from the system. I didn't  
7 notice it myself.

8 Might we have a brief recess and redact that  
9 so we can proceed?

10 I apologize. I -- I know we redacted it  
11 from every single binder, but I think that perhaps our  
12 paralegal forgot that the system also needs redactions.

13 THE COURT: Okay.

14 MS. AUSTIN: Your Honor, I'm not going to do  
15 anything else, but just notify the Court we're going to  
16 ask for an instruction at some point regarding these  
17 translations, and how the jury should perceive them.  
18 That should hopefully clear this up.

19 But at this --

20 THE COURT: I expect to give an instruction  
21 about the question of fact concerning the  
22 translations --

23 MS. AUSTIN: Thank you.

24 THE COURT: -- of the transcripts. The  
25 instruction I gave to the jury was about the interpreter

1 interpreting testimony, not about the transcripts.  
2 Okay? That's fine.

3 MS. AUSTIN: Thank you.

4 THE COURT: So, let me know how much time  
5 you need. I'll send the jury back so they're not  
6 waiting in court.

7 MS. MARTINEZ: May I confer with the  
8 paralegal? I don't want to put her under time pressure  
9 that she can't meet.

10 THE COURT: I'll wait right here.

11 (Pause.)

12 MS. MARTINEZ: Your Honor, Ms. Griego  
13 apologizes. She needs about 20 minutes and will be able  
14 to take care of the problem.

15 She also informed me that while she was  
16 sitting there, she just went through and made sure that  
17 the other redactions that were agreed over the past few  
18 days have already been included on the system. So,  
19 knock on wood, we shouldn't have any problems with any  
20 other redactions. But she did miss the "verbatim" on  
21 the cover page.

22 THE COURT: You want to take a 20-minute  
23 recess?

24 MS. MARTINEZ: Is that okay, Your Honor?

25 THE COURT: Yes, we have to take a break.

1 Okay. All right.

2 You all can stay here, and let the jury go  
3 back.

4 (Thereupon, the sidebar conference was  
5 concluded.

6 THE COURT: Ladies and gentlemen, we have  
7 some technical difficulties. We'll give you a 20-minute  
8 recess. 20-minute recess.

9 (Court recessed at 3:03 p.m. and reconvened  
10 at 3:28 p.m.)

11 THE COURT: You want to bring the witness  
12 back?

13 (Witness resumed stand.)

14 THE COURT: You can bring our jury out,  
15 Mr. Toliver. Thank you.

16 (Jury present at 3:30 p.m.)

17 You may be seated.

18 Counsel, you may proceed.

19 MS. MARTINEZ: Thank you, Your Honor.

20 All right. So, we were on Government's  
21 Exhibit 7-A-1. If we could bring up the cover page.

22 BY MS. MARTINEZ:

23 Q. According to that cover page, what was the date  
24 of this recording?

25 Oh, and you know what, sir? To make it easier

1 for you, everything is going to come up on the screen  
2 right there.

3 You can take that paper, get it out of your way  
4 so you have some space at the stand. If for some reason  
5 we need it back, we will take it back. But we can use  
6 the screen from here on.

7 So, looking at the screen and at the cover page  
8 of Government's Exhibit 7-A-1, what was the date of this  
9 recording?

10 A. It's December 12th -- I mean December 6th, 2013.

11 Q. Who was involved in this recording with you?

12 A. It was Peluca, or Greñas, from PVLS.

13 Q. Turning to page six of this translation, I'm  
14 going to start towards the bottom of page six, about  
15 three lines up. If you could review the last few lines  
16 of that translation just to refresh your memory, and  
17 then I'm going to ask you a couple questions.

18 A. Can you repeat that again, which lines?

19 Q. Absolutely. The last three speakers at the  
20 bottom of the page, review that for a moment, and then  
21 I'm going to ask you questions.

22 A. Okay.

23 Q. All right. Who is JR speaking here?

24 A. That's me, Junior.

25 Q. And JL is?

1 A. Peluca.

2 Q. So, starting with where you say, "Hey, and what's  
3 up with Demente," who is Demente?

4 A. He was a member -- he's a member of PVLS clique.

5 Q. All right. And what were you asking in relation  
6 to Demente?

7 A. Because he originally got arrested.

8 Q. All right. And who were you speaking to here?

9 A. Peluca, or Greñas, from PVLS.

10 Q. What was Greñas's response?

11 A. That he was going to go to court and find out  
12 what -- what's going on with Demente. But, Payaso --

13 Q. What -- what did you understand "court" to mean  
14 in this -- in this instance?

15 A. That he's -- he's in jail, and he has a hearing.

16 Q. So, a normal court?

17 A. Yes.

18 MS. MARTINEZ: May we show the witness what  
19 has been actually already admitted as Government's  
20 Exhibit 66-A.

21 We can just put it on the screen if Your  
22 Honor doesn't mind.

23 THE COURT: That's fine.

24 MS. MARTINEZ: It's been admitted already.

25 Sorry, Mr. Toliver.

1 BY MS. MARTINEZ:

2 Q. Do you recognize this person?

3 A. Yes.

4 Q. Who is that?

5 A. Peluca from PVLS.

6 Q. Is that the individual you're speaking to in this  
7 transcript we're looking at?

8 A. Yes.

9 Q. All right. Let's go back to the call,  
10 Government's Exhibit 7-A-1. All right. We were on page  
11 six.

12 Now, when Greñas responds about court, he  
13 mentioned Payaso. Who is Payaso?

14 A. He was the first word from jail, to PVLS clique  
15 outside.

16 Q. What do you mean, "from jail"?

17 A. He was in jail, but, he was -- he was giving the  
18 orders from jail to the clique outside.

19 Q. Turning to page --

20 MR. CONTE: Objection, Your Honor. There's  
21 no foundation for that.

22 THE COURT: If you'd lay a foundation.

23 BY MS. MARTINEZ:

24 Q. How long have you -- how do you know about  
25 Payaso?

1 A. By phone, and, I met him back in 2002.

2 Q. What do you mean when you say you know him by  
3 phone?

4 A. We talked on the phone a lot of times.

5 Q. What do you know about his position within PVLS?

6 A. He was -- that he was the first word.

7 Q. And, what, if anything, did he tell you about his  
8 location when you were speaking to him on the phone?

9 A. That he was in jail.

10 Q. Moving on to page seven.

11 I have a number of questions I'm going to ask you  
12 about this page. If you could start reviewing the page,  
13 and we'll start from the top, down. But take a moment  
14 to refresh your memory.

15 MS. MARTINEZ: And, Your Honor, perhaps this  
16 would be a good time to note for the record that, for  
17 the jurors, there are transcript binders under  
18 everyone's chairs, to the extent to jurors want to  
19 follow on paper in addition to the screen, if Your Honor  
20 would permit that.

21 THE COURT: You can if you'd like.

22 MS. MARTINEZ: For any jurors who are  
23 opening their exhibit book, we are on Government's  
24 Exhibit 7-A-1, and we're on page seven.

25 THE WITNESS: Okay.

1 BY MS. MARTINEZ:

2 Q. Starting at the top of the page, Greñas  
3 references bail. What did you understand "bail" to mean  
4 in this context?

5 A. He was -- he's referring to bail of Demente,  
6 because he's in jail. He is trying to find out how much  
7 is the bail.

8 Q. And why were you discussing -- or why was Greñas  
9 discussing Demente's bail with you?

10 A. Because I asked him --

11 MR. LEIVA: Your Honor, I object. Calls for  
12 speculation.

13 THE COURT: Overruled.

14 BY MS. MARTINEZ:

15 Q. You can go ahead and answer. Why was Greñas  
16 discussing Demente's bail with you?

17 A. Because he was arrested.

18 Q. Do you know what he was arrested for?

19 MR. CONTE: Objection.

20 THE WITNESS: Yes.

21 MR. CONTE: Calls for hearsay response.

22 MS. MARTINEZ: Your Honor, I can lay the  
23 foundation, but, the -- the foundation will be that  
24 other gang members told him, which, of course, is  
25 permissible.

1 MR. CONTE: If she lays a foundation, Your  
2 Honor.

3 THE COURT: All right.

4 BY MS. MARTINEZ:

5 Q. You said that you do know what he was arrested  
6 for; is that right?

7 A. Yes.

8 Q. How do you know what he was arrested for?

9 A. Because they told me -- the gang members from  
10 PVLS told me what he was arrested for.

11 Q. What was Demente arrested for?

12 A. For the 12 shotgun.

13 Q. What do you mean by "the 12 shotgun"?

14 A. He got arrested for a gun.

15 Q. What kind of gun?

16 A. A 12 shotgun.

17 Q. Further down the page, the fifth speaker, there's  
18 a reference to a 12 and a machete. Do you understand  
19 what that reference is about?

20 A. Yes.

21 Q. Can you tell the jury?

22 A. They don't -- they don't speak the full terms of  
23 what is it. They will say, probably, 12. But we know  
24 what 12 means, a 12 shotgun. And, of course, a machete  
25 is a machete.

1 Q. Further down the page, you ask, "Who were you  
2 going to hit?"

3 What did you mean by, "Who were you going to  
4 hit?"

5 A. They were -- they were going to kill someone.

6 Q. Who was the intended victim?

7 A. Peligroso from PVLS.

8 Q. Do you know who was planning to kill Peligroso?

9 A. Yes. It was Peluca, Demente --

10 MR. LEIVA: Your Honor, excuse me. I would  
11 object to foundation, lack of foundation.

12 THE COURT: Foundation.

13 BY MS. MARTINEZ:

14 Q. Going forward, sir, if I ask you, "Do you know,"  
15 just answer "yes" or "no," and then I'll ask a follow-up  
16 question. Okay?

17 All right. Do you know who was going to go kill  
18 Peligroso?

19 A. Yes.

20 Q. How do you know?

21 A. Because they told me.

22 Q. Who is they?

23 A. Peluca from PVLS.

24 Q. Who was going to go kill Peligroso?

25 A. Peluca from PVLS, Demente from PVLS, and some

1 other *chequeo* that I don't know.

2 Q. All right. Now, continuing towards the bottom of  
3 the page, the last thing that Greñas says there, he  
4 says, "We're going to do the hit. What a coincidence."  
5 Do you understand what he meant by "coincidence" there?

6 A. Yes.

7 Q. What did he mean?

8 A. He explaining to me that there was some cops  
9 already on the place that they were going to hit  
10 Peligroso, and what a coincidence the police was already  
11 there, without them turning to anybody.

12 Q. What was the significance of him calling it a  
13 coincidence?

14 A. He thinks somebody -- somebody rat them out.

15 Q. Continuing to page eight, I have a few questions  
16 about this page. If you could review briefly, and then  
17 I'll ask you questions.

18 A. Okay.

19 Q. Okay. In the first few exchanges in the top of  
20 the page, what are you and Greñas talking about?

21 A. He's -- he's talking about, um, they got stop by  
22 the police, and they find out what they were up to that  
23 night.

24 Q. Where did they get stopped by the police?

25 A. They went to Taco Bell, and after Taco Bell, he

1 says, they got stopped.

2 Q. Greñas says that it was strange. Do you  
3 understand what he meant by that?

4 A. Yes. That he -- he thinks somebody say  
5 something -- somebody rat him out.

6 Q. Did he tell you who he thought had ratted him  
7 out?

8 A. He said, he think it's Drowsy.

9 Q. Now, if you continue to the long paragraph in the  
10 center of the page, Greñas says, "We have to  
11 investigate." Do you understand what he means by  
12 "investigate"?

13 A. He now -- he think that it's definite somebody  
14 rat him out. They need to find out who it is.

15 Q. What do you mean, he has to find out who it is?

16 A. They need to check -- they need to check within  
17 his clique or whoever they talk to, who might be the  
18 rat.

19 Q. What do you mean by "rat"?

20 A. That somebody is talking to the police.

21 Q. What's the problem with talking to the police,  
22 within MS-13?

23 A. That's a rule. You're going to get killed.

24 Q. Later in that same paragraph, Greñas says, "He  
25 showed me a paper."

1                   Do you understand what that means?

2       A. Yes.

3       Q. What is a paper?

4       A. Give me a second.

5                   Pretty much, he -- what I understand, the police  
6 show him what he was saying.

7       Q. What do you mean, "the police showed what he was  
8 saying?"

9       A. That, what he was talking to the other gang  
10 members without him. He been talking to the police.

11      Q. Who?

12      A. Greñas.

13      Q. All right. Continuing on to page nine. If you  
14 could review the first half of this page, then I'll ask  
15 you questions.

16      A. Okay.

17      Q. What did you understand Greñas to mean when he  
18 said, "We're just like the FBI"?

19      A. They will -- they will find you and they will  
20 kill you for being a rat. It don't matter how long it  
21 takes.

22      Q. What did you understand when he says, "We always  
23 hit"?

24      A. That they always kill.

25      Q. A second time he says, "We're just like the FBI,"

1 he says, "the Mara." What is the Mara?

2 A. It's the MS-13. It's the gang.

3 Q. And then continuing to the next thing he says,  
4 "Investigating, but that we get them, we get them."  
5 What do you understand that to mean?

6 A. Until they find out who's the rat, they --  
7 they're not going to -- they're not going to stop.  
8 They're going to find who it is and they're going to  
9 kill him.

10 Q. Let's turn now to page 11. Please review this  
11 page, and look up when you're done and I'll ask you  
12 questions.

13 A. Okay.

14 Q. Starting with the first paragraph at the top of  
15 the page, when Greñas says, "These are the  
16 consequences," what do you understand that to mean?

17 A. He's trying to make a point that if you rat or  
18 something, you're going to die, by killing someone.

19 Q. The next paragraph, he says, "Sometimes when  
20 they're rats, you understand, we cut their heads off."

21 What did you understand him to mean there?

22 MR. AQUINO: Judge, I will note an  
23 objection. I think it calls for speculation on the part  
24 of the speaker. This person has not been identified as  
25 a gang expert.

1                   THE COURT: No, he hasn't, but he is a gang  
2 member. Objection overruled.

3 BY MS. MARTINEZ:

4 Q. What did you understand Greñas to mean when he  
5 says, "Sometimes when they're rats, you understand, we  
6 cut their heads off"?

7 A. When they find a rat within the gang, they're  
8 going to take -- going to cut your head off.

9 Q. What is a rat to MS-13?

10 A. A rat is someone that talk to the police.

11 Q. The next line that Greñas says, "Dismembered, son  
12 of a bitch, we hacked him all up in pieces." Do you  
13 understand who he is talking about there?

14 A. Yes.

15 Q. Who was he talking about?

16 A. Lagrima.

17 Q. Who was Lagrima?

18 A. He was a member of PVLS clique.

19 Q. What did you understand him to mean when he says,  
20 "We hacked him all up in pieces"?

21 A. That they cut him up with a machete in pieces.

22 Q. What was Greñas's tone of voice when he  
23 referenced cutting up Lagrima with a machete?

24 A. He was heartless.

25 MR. CONTE: Objection, Your Honor.

1 THE COURT: What's the objection?

2 MR. CONTE: He doesn't -- I don't think this  
3 witness can say whether he was heartless or not.

4 THE COURT: I'll give you a chance to  
5 cross-examine. Objection overruled.

6 BY MS. MARTINEZ:

7 Q. Now, continuing a couple lines down, you say to  
8 Greñas, "I thought that asshole was kidding me when he  
9 told me about that." Who are you talking about?

10 A. Because I remember somebody else told me -- I  
11 can't recall it right now -- about Lagrima's murder.

12 Q. How does Greñas respond to you saying you thought  
13 someone else was kidding?

14 A. No, he was -- he says, they did, they dismembered  
15 Lagrima.

16 Q. Now, the next line down for Greñas, he says, "We  
17 dismembered him, two -- two times, we dismembered him."  
18 Do you understand what he meant when he says they  
19 dismembered him two times?

20 A. Yeah. They -- they cut him in pieces twice.

21 Q. Continuing, he says, "We reburied him, and then  
22 we went and took him out and we dismembered him, and  
23 then we buried him again." Do you understand what he  
24 meant there?

25 A. Yes.

1 Q. Please tell the jury.

2 A. They kill him, they bury him. Then they went  
3 back to unbury him, and cut him and bury him again.

4 Q. After that, you ask about someone's sister  
5 calling the cops.

6 A. Yes.

7 Q. Whose sister?

8 A. Lagrima's sister.

9 Q. Why did you ask about Lagrima's sister?

10 A. Because, if someone is missing, I mean, the first  
11 thing that comes to my mind is family member, they were  
12 going to look for them.

13 Q. The very bottom of the page, the last thing you  
14 say on this page is, "Didn't anyone chicken out, man?"  
15 What do you mean by "chicken out"?

16 A. They -- when they were killing Lagrima, if  
17 anybody feel remorse or not to do it.

18 Q. Why did you ask Greñas whether anyone chickened  
19 out?

20 A. Because -- I ask him, so that way I can approach  
21 to that -- to that person, instead of the crazy ones.  
22 Probably they can -- they can talk or they can say  
23 something that can -- I can talk to the FBI about it, or  
24 how to approach them.

25 Q. Why would you want to talk to someone who had

1 chicken out during the murder?

2 A. Because, that show you that at least, they --  
3 they didn't want to do it at some point, but, they end  
4 up doing it. But there's not like -- like I would say,  
5 crazy from the head.

6 Q. What would be the purpose of talking to that  
7 person about the murder?

8 A. Just to find out how -- where was Lagrima, how  
9 they kill him, who kill him.

10 Q. What would you do with that information?

11 A. I would give it to the handler right away.

12 Q. Continuing to the next page, page 12, please  
13 review that page, and then I'll -- and look up when  
14 you're finished.

15 A. Okay.

16 Q. How did Greñas respond to your question about  
17 whether anyone chickened out during the murder of  
18 Lagrima?

19 A. He said, "Yes, there was one."

20 Q. Who did he say chickened out?

21 A. He says it was Lil Slow.

22 Q. Who was Lil Slow?

23 Do you know who Lil Slow is?

24 A. Yes.

25 Q. Who is Lil Slow?

1 A. A homeboy from PVLS.

2 Q. Have you met Lil Slow in person?

3 A. Yes.

4 Q. Have you spoken to him on the phone?

5 A. Yes.

6 Q. About how many times?

7 A. Only 40 times, I would say.

8 Q. When Greñas says, "Look, he grabbed the knife  
9 from me, homie, and started to cut him up all over,  
10 without mercy," who is he talking about?

11 A. Lil Slow.

12 Q. How did you reconcile that statement with Greñas  
13 saying that Slow had chickened out?

14 A. Can you repeat the question --

15 Q. Sure.

16 A. -- a different way, please?

17 Q. You said that Greñas said Slow chickened out.  
18 And then later Greñas talks about Slow cutting up  
19 Lagrima.

20 A. Yes.

21 Q. What was your understanding of Greñas's  
22 explanation about Slow?

23 A. At the beginning -- the only -- what I understand  
24 is, at the beginning Slow kind of didn't want to do it,  
25 but then he just went crazy on Lagrima.

1 Q. Towards the bottom, there's one long paragraph by  
2 Greñas. He says, at the -- towards the beginning,  
3 "Respect for that son of a bitch, because that son of a  
4 bitch has turned out to be solid for us." Who is he  
5 talking about?

6 A. Lil Slow.

7 Q. What does he mean by respect for Lil Slow?

8 A. He think that by Lil Slow showing what he did to  
9 Lagrima, he -- he earned his respect.

10 Q. And what does he mean by "turned out to be solid  
11 for us"?

12 A. Like, he -- he's -- he's a -- he's a -- I would  
13 say, he's hundred percent for the gang, and nothing else  
14 but the gang.

15 Q. Towards the ends of that paragraph, he talks  
16 about dismembering, and then says "bury him at 15 days,  
17 getting him out again." What do you understand him to  
18 be talking about there.

19 A. It's about what they did to Lagrima.

20 Q. What did they do to Lagrima?

21 A. They bury him and then they unbury him after  
22 15 days.

23 Q. And then Greñas says, "You have to have some  
24 balls on you." What did you understand that to mean?

25 A. That, you have to be -- you have to be crazy to

1 do that.

2 Q. The very last thing you say on this page, you  
3 asked Greñas, "Why did you get him out again at  
4 15 days?" Why did you ask him that?

5 A. Because, I wanted to know the reason why, why  
6 they did that for, you know, what was in their minds.

7 Q. Why did you want to know?

8 A. Because, it's only -- I can't even put words to  
9 somebody that crazy would do that, just for no reason.

10 Q. Let's turn to page 13. How did Greñas respond to  
11 your question about why he would do that?

12 A. You want me to read the whole page?

13 Q. Let's just start with his response to your  
14 question.

15 A. He just -- his response is like, he just want to  
16 know how mentally all of them are, his clique and  
17 himself.

18 Q. What do you mean by "how mentally all of them  
19 are"?

20 A. How crazy, how crazy they are.

21 Q. What did you understand by "mental capacity" to  
22 mean, in his response?

23 A. The crazier, who is crazier gets in the whole  
24 clique.

25 Q. And who is Greñas referring -- who did you

1 understand Greñas to be referring to when he's talking  
2 about mental capacity?

3 A. He's talking about himself.

4 Q. Continuing down to the very bottom of the page,  
5 the last three lines there, Greñas says, "Yes, no, man,  
6 look, I" -- please review from there to the bottom, and  
7 then I have a couple questions.

8 A. Okay.

9 Q. What do you understand Greñas to mean when he  
10 says, "I was the one in charge"?

11 A. That he was the one in charge of Lagrima's  
12 murder.

13 Q. He then says, "I called down there." Do you  
14 understand what he meant when he --

15 A. Yes.

16 Q. -- said he called down there?

17 A. That means that he called El Salvador.

18 Q. Why would he call El Salvador?

19 A. Because, they need to get the okay from  
20 El Salvador gang, or his clique, if they want to kill  
21 somebody.

22 Q. Why?

23 A. Because their rules, they need to have proof.  
24 They need to have -- the guys need to get the okay, and  
25 they need to explain why they want to kill that person.

1 Q. What do you mean by "proof"?

2 A. Proof, like, what he says they have seen, what  
3 they say -- if there is any paper that says that he have  
4 talk to a police, or anything that can implicate  
5 Lagrima.

6 Q. Continuing in that same section, he says,  
7 "Everyone was at the meeting there. Prove it, he said  
8 to me. So, I proved it." What do you understand that  
9 to mean?

10 A. Means that he call El Salvador, and everybody was  
11 there, all the -- the first words of the clique,  
12 whoever, they have control, and they asked for proof,  
13 and he has the proof.

14 Q. You then ask, "Poison?" Who is Poison here?

15 A. Poison -- Poison was the -- was the, I would say,  
16 the shot caller from El Salvador to his clique back up  
17 here.

18 Q. Which clique?

19 A. PVLS clique.

20 Q. Why did you ask about Poison here?

21 A. Because they always go to Poison. Anything, any  
22 question, anything, any okay that they needed to, they  
23 always go to Poison.

24 Q. Turning to page 14, please review that page and  
25 then I'll ask you a few questions.

1 A. Okay.

2 Q. The first thing Greñas says on that page is, "All  
3 of the shot callers were there." Who were the shot  
4 callers?

5 A. All of them in the gang in El Salvador, PVLS.

6 Q. And when he says "there," what is he talking  
7 about?

8 A. In El Salvador. "There" means he call El  
9 Salvador.

10 Q. And then you respond briefly, and then Greñas has  
11 a lengthy paragraph. What is he talking about in that  
12 long paragraph?

13 A. He's just saying that, like, 75 percent agree  
14 with him, to give him the go-ahead to kill Lagrima.

15 Q. 75 percent of who?

16 A. Of the gang in El Salvador.

17 Q. He mentions the 7-Eleven in that paragraph, and  
18 then again, "the 7." Do you understand what he's  
19 talking about?

20 A. Yes.

21 Q. What is he talking about?

22 A. It just meant to meet -- he told Lagrima about a  
23 deal, a drug deal that was going to happen. He just  
24 told him where, and what they were going to do about the  
25 drug business. And, for some reason, the police showed

1 up. They were there. So, that's what he -- he  
2 thought -- he think that Lagrima was a rat.

3 Q. Why?

4 A. Because he think that Lagrima snitch on them.

5 Q. At the end of that paragraph, he says, "How  
6 strange, homeboy, that the detectives showed up." What  
7 did you understand that to mean?

8 A. Those are the key words. When they use  
9 "strange," that means that -- it's somebody -- they  
10 think somebody's ratting -- somebody is a rat.

11 Q. A few lines later, Greñas says, "So, you tell  
12 me" -- "so" -- and then dot dot dot -- "so then I sent  
13 the proof down there." What do you understand him to  
14 mean by "the proof"?

15 A. The proof means that whatever they asking in El  
16 Salvador, he send them to get the okay.

17 Q. What do you understand the proof was in this  
18 instance?

19 A. Proof that -- he has any paper, or if he saw with  
20 his own eyes. That's what I would think of the proof.

21 Q. And to be clear, here, it's proof of what?

22 A. Of, he was a rat.

23 Q. Who?

24 A. Lagrima.

25 Q. Moving on to page 15. Please review that page,

1 and look up when you're done.

2 A. Okay.

3 Q. In the middle of this page, Greñas says, "He --  
4 as he was dying, he told us, 'let me be,' he said, 'I  
5 swear I'll tell you everything that was said and who  
6 else,' he told me. There's someone else involved."

7 Who do you understand Greñas to be talking about  
8 here?

9 A. Lagrima.

10 Q. What is he saying about Lagrima?

11 A. Lagrima pretty much was begging for his life, and  
12 he was going to tell them who was the rat.

13 Q. Did Lagrima tell Greñas who the rat was?

14 A. He just saying he mention it's really another  
15 gang member.

16 Q. What was Greñas's tone of voice when he said that  
17 Lagrima was begging for his life?

18 A. Like I said, he -- no remorse.

19 Q. Down towards the bottom of the page, Greñas says,  
20 "Yes, no man, and when -- when we got to him, I told  
21 him, it was all of a sudden." Who do you understand him  
22 to be talking about there?

23 A. About Lagrima.

24 Q. He then says, "We had everything thought out."  
25 What do you understand that to mean?

1       A. That all his clique knew what was going to happen  
2 to Lagrima. They -- they knew how they were going to  
3 kill him, where they were going to kill him.

4       Q. He says, "We let him be seen with other people,  
5 but not to be seen with us." What do you understand  
6 that to mean?

7       A. It was just to make people feel -- think that  
8 they were not with them, when probably Lagrima  
9 disappear. He was with somebody else.

10      Q. Moving on to page 16.

11           I'm just going to ask about the first response  
12 from Greñas there, so if you could review just the first  
13 several lines.

14      A. Okay.

15      Q. When Greñas say, "The day that the son of a bitch  
16 left us," what do you understand that to mean?

17      A. Lagrima was dead.

18      Q. Then he talks about something called the beast.  
19 What is the beast?

20      A. The devil.

21      Q. He says, "The beast sang for joy." What does  
22 that mean?

23      A. That means the devil was happy for what they had  
24 done.

25      Q. What had they done?

1 A. They killed Lagrima.

2 Q. He then said, "Twice he sang for joy." What did  
3 you understand him to mean when he said that the beast  
4 sang for joy twice?

5 A. The devil was happy for what he had done, twice.  
6 Like when you go to church, if you're a Christian, you  
7 follow what God wants. So if you're doing good stuff, I  
8 mean, you're okay with God. But, with the devil, the  
9 worse, the crazier that you get, it's just pretty much  
10 worship the devil.

11 Q. What role does the devil or the beast play in the  
12 culture of MS-13?

13 A. It's a sign. So, it's a sign they show, the two  
14 horns of the devil.

15 Q. After Greñas says, "Twice he sang for joy," he  
16 says, "the time we hit him and the time we took him  
17 out." What did you understand him to mean by the time  
18 we hit him?

19 A. The time that Lagrima got kill, and the time that  
20 they went back and bury him -- bury him back.

21 Q. Continuing to page 17, please review this page,  
22 starting with in the middle where Greñas says, "No,  
23 well, we'll see what's going on," that long paragraph to  
24 the end of the page. And look up when you're done.

25 A. Okay.

1       Q. In the middle of that paragraph, in the middle of  
2 the screen, Greñas says, "This is what will happen to us  
3 if we rat." What did you understand him to mean by  
4 that?

5       A. They going to kill you if you rat, if you talk to  
6 the police.

7       Q. Who is going to kill you?

8       A. The MS-13, or the gang.

9       Q. Then he continues and he says, "I told them this:  
10 whoever rats will get dismembered." Who did you  
11 understand Greñas to be telling that whoever rats will  
12 get dismembered?

13      A. To his clique, the members of his clique, PVLS.

14      Q. What did you understand him to mean by  
15 "dismembered"?

16      A. They -- they cut him in pieces.

17      Q. Was that code or literal?

18      A. That was literal. They cut them in pieces.

19      Q. And he says, "If we don't get him, then somebody  
20 they care about will get dismembered." What did you  
21 understand that to mean?

22      A. They -- they go after your family. If they're  
23 not able to get you, they going to go after your family  
24 or somebody close to your family, or whoever they feel  
25 that they can hurt, they hurt you at the same time.

1 Q. And, do what to the family?

2 A. Kill. Just kill, nothing else.

3 Q. The next thing Greñas says is, "Yes, and since  
4 what I do is this, I bury him shallow and go back to  
5 take him out at 15 days so I can dismember him again and  
6 rebury him again." Who do you understand him to be  
7 talking about?

8 A. What he did to Lagrima.

9 Q. What do you understand him to be saying he did to  
10 Lagrima?

11 A. He kill him, bury him, went back after 15 days,  
12 unbury him and bury him back.

13 Q. Towards the bottom of the page, the  
14 second-to-last thing that Greñas says is -- the second  
15 half of it -- "So you've never dismembered people, man?"  
16 What did you understand him to be asking you?

17 A. That if I have -- I ever done that.

18 Q. What did you say?

19 A. I said, "No."

20 Q. Why?

21 A. Because, I never done that.

22 Q. What was Greñas's reaction when you said you'd  
23 never done something like that?

24 A. Well, I thought that he was going to think  
25 something of me, like, this guy, you know, he's

1 probably -- he's not that big what they say, or I  
2 shouldn't be talking to him. But he didn't say anything  
3 else.

4 Q. Please turn to page 18, just the first 13 -- or  
5 the first -- excuse me -- the first three lines. He  
6 asks you again, "So you've never dismembered people?"

7 A. Yes.

8 Q. And what do you say?

9 A. "No."

10 Q. Why didn't you brag and pretend that you had done  
11 things like Greñas had done?

12 A. Because there's nothing, you cannot brag about  
13 that.

14 Q. Why not?

15 A. Because there's a rules in the gang that, they  
16 know me, they say I brag about it, and they know that I  
17 hadn't done anything, then, I can -- they're going to  
18 kill me, pretty much, or they're going to put you on a  
19 mission to do it, to prove yourself to the gang.

20 Q. What do you mean by "a mission"?

21 A. A mission go and kill someone. If you brag about  
22 and you hadn't done it, then you -- you need to prove to  
23 the gang.

24 Q. After this conversation where you didn't brag to  
25 Greñas --

1 A. Uh-huh.

2 Q. -- did Greñas continue speaking to you?

3 A. Yes.

4 Q. Please turn to page 19. And I'm going to ask you  
5 about that last paragraph by Greñas at the bottom.

6 A. Okay.

7 Q. What did you understand Greñas to be talking  
8 about?

9 A. He's talking about -- he's talking about Lagrima.

10 Q. What is he saying about Lagrima?

11 A. That, pretty much, Lagrima was begging for his  
12 life.

13 Q. When?

14 A. When he was getting killed.

15 Q. Please turn to page 20. At the top of the page,  
16 what did Greñas say about his response to Lagrima when  
17 Lagrima was begging for his life?

18 A. Pretty much he -- he didn't care. Like I say, he  
19 just say kill him. He didn't pay attention what he was  
20 saying.

21 Q. In the transcript at the end of that it says,  
22 bracket, laughs, bracket. What does that mean?

23 A. Say that again, please.

24 Q. At the very end of that -- of that lines at the  
25 top, where it says, "laughs"?

1 A. Uh-huh.

2 Q. Was he laughing on the call?

3 A. Yes, he was laughing.

4 Q. The next thing that Greñas says, the second half  
5 of that paragraph, he says, "Look, we grabbed him by the  
6 hands. We knocked him down. We machete him." What do  
7 you understand him to be describing?

8 A. They used a machete to hurt Lagrima, to cut him  
9 in pieces.

10 Q. What else did Greñas say there about what he did  
11 to Lagrima?

12 A. They knocked him down with the machete.

13 Q. When he continues and says, "The bone in that son  
14 of a bitch's head was tough, because I wasn't able to  
15 take it off," what did you understand that to mean?

16 A. I understand that they were trying to cut his  
17 head, and, they couldn't.

18 Q. If we could turn now to Government's  
19 Exhibit 8-A-1. Beginning with the cover page here, what  
20 was the date of this recording?

21 A. It was January 26, 2014.

22 Q. Who were you speaking to in this recording?

23 A. I'm -- I'm talking to -- this is myself and Lil  
24 Payaso from PVLS.

25 MS. MARTINEZ: If you could show the witness

1 what has been marked for identification purposes as  
2 Government's Exhibit 67-C.

3 Your Honor, while Mr. Toliver gets that  
4 exhibit, can we approach briefly?

5 THE COURT: Yes.

6 (Thereupon, the following side-bar  
7 conference was had:)

8 MS. MARTINEZ: Your Honor, as the jurors are  
9 going to be reading transcripts, I noticed several  
10 times, several of time pick up a pen and thought better  
11 and put it down. Are the jurors permitted to take notes  
12 in the transcript binder, now that we resolved that?

13 THE COURT: Are these going to be their  
14 notebooks for --

15 MS. MARTINEZ: I don't see why they can't  
16 be. They've all been admitted and all the redactions  
17 have been resolved. Everything in the binder has now  
18 been admitted. It seems to me it would be helpful for  
19 deliberations, rather than taking notes in a little note  
20 pad while they're looking at a big binder.

21 All these exhibits will go back for  
22 deliberation. I think the question is just whether Your  
23 Honor permits them to take their own binder back, or  
24 just the one court binder.

25 I submit for deliberation, if they're going

1 to read the transcripts, it would probably be to  
2 everyone's benefit if they have their own copies, and  
3 don't have to share one copy among 12 jurors to try to  
4 read transcripts.

5 THE COURT: I'm all in favor of efficiency.  
6 So let everyone take notes.

7 MR. CONTE: I would object. In this case,  
8 the Spanish language involved, they're never allowed to  
9 take transcripts back in, in many of these cases where  
10 Spanish language is involved.

11 So I'm going to object to them taking the  
12 transcripts back in the case. Transcripts generally are  
13 not evidence. It's the recordings that are evidence.

14 But given the circumstances of Spanish  
15 language, we're making do. I just think this is  
16 improper. Counsel is going through line by line what  
17 the people said. And to permit the jurors to take the  
18 transcripts back, we wouldn't do it in an English  
19 speaking case, and I don't see why we would do it in  
20 this case here.

21 THE COURT: All right. The reason we're  
22 doing it in this case is because the transcripts -- all  
23 the recordings would be in Spanish, right?

24 MR. CONTE: Right.

25 THE COURT: So it wouldn't be probative

1 evidence.

2 I'm not asking you to agree. I'm saying  
3 that, given the situation, I think I'm going to let them  
4 have the transcript back. The question is whether they  
5 have one or twelve copies of it.

6 Your objection is they should not have any.

7 MR. CONTE: Correct.

8 THE COURT: Objection overruled.

9 MS. MARTELL: I am going to note an  
10 objection. The issue is not being 12 copies of  
11 transcript, but, if they're going to be taking notes in  
12 them, they're supposed to be guided by their own  
13 memories and their own notes, not the other people's  
14 notes.

15 But do the binders have the names on them?  
16 How are we going to keep track of whose binder is whose?  
17 I think by putting -- I think they've been doing fine up  
18 until now. They can have the binder. They can read the  
19 transcripts, and have them for efficiency in the jury  
20 deliberations.

21 But I think that by allowing them to take  
22 notes in those transcripts, we get into a situation,  
23 perhaps, of some jurors -- some jurors are interchanging  
24 binders and notes are becoming communal type notes.  
25 That's my concern.

1                   THE COURT: Okay. Thank you.

2                   Objection is overruled. I'll let them use  
3 it.

4                   (Thereupon, the sidebar conference was  
5 concluded.)

6                   THE COURT: Ladies and gentlemen, the  
7 transcripts you have are not transcripts prepared by  
8 court-certified interpreters. I want to make sure you  
9 understand that. There's a difference between my  
10 instruction at the beginning of the trial about the  
11 court interpreters from the witness stand and what you  
12 have in these binders.

13                  What's in these binders was prepared from  
14 the witnesses you heard from, but they are not  
15 court-certified. Do you understand?

16                  I'm going to let take notes in these. And  
17 there may be a contest about the accuracy of these  
18 transcripts during the trial. You can take notes in  
19 them. And put your name on the book, so that will be  
20 your notebook for deliberations. Okay? Thank you.

21                  You may proceed, Counsel.

22 BY MS. MARTINEZ:

23 Q. Do you have in front of you Government's  
24 Exhibit 67-C?

25 A. Yes.

1 Q. Do you recognize that individual in that picture?

2 A. Yes. That's Lil Payaso from PVLS.

3 MS. MARTINEZ: Your Honor, the government  
4 moves to admit Government's Exhibit 67-C.

5 THE COURT: Received.

6 MS. MARTINEZ: May we publish?

7 THE COURT: Yes.

8 BY MS. MARTINEZ:

9 Q. Returning now to the January 26th recording with  
10 Lil Payaso, Government's Exhibit 8-A-1, let's go to page  
11 five.

12 I'm going to ask you on this page only about that  
13 last line -- well, actually, let me ask you first: Who  
14 are the speakers on this page?

15 A. Myself and Lil Payaso from PVLS.

16 Q. Who is JR?

17 A. Junior.

18 Q. Who is OC?

19 A. He's Lil Payaso.

20 MS. MARTINEZ: Just clarifying so everyone  
21 can follow along with who is who.

22 BY MS. MARTINEZ:

23 Q. The last line there by you, please review that  
24 last line and then I'll ask you a question.

25 A. Okay.

1 Q. You used the word, *lloron*, l-l-o-r-o-n.

2 A. Yes.

3 Q. What does that mean?

4 A. It's -- it's like a you're saying, cryer,  
5 crybaby -- it's not a crybaby, but it's just a term that  
6 we -- that they use and I use for Lagrima.

7 Q. Why do you use that term, *lloron*, to refer to  
8 Lagrima?

9 A. He has a teardrops, two on his left -- left or  
10 right cheek. I can't recall that.

11 Q. Why were you asking Lil Payaso about Lagrima?

12 A. Because I want to know, what is -- what was he  
13 say about it, and if he say something different about  
14 what happened to Lagrima.

15 Q. Why did you want to know if he would say  
16 something different -- well, first of all, different  
17 from whom?

18 A. From Peluca, from Greñas.

19 Q. Why did you want to know if Lil Payaso would say  
20 something different than what Greñas said?

21 A. Just to find out if whatever they saying is true,  
22 or if they -- if he sees something else, action, no.

23 Q. What was the purpose of you finding out this  
24 information?

25 A. Purpose was to find out -- was if they thought it

1 was somebody else is ratting, or if -- where was  
2 Lagrima, all those -- pretty much that's all it was.

3 Q. What did you do with the information that you  
4 learned?

5 A. I gave it to my handler right away.

6 Q. Continuing in that same line, you asked Lil  
7 Payaso, "Did you ask down there for the okay or what?"  
8 What does that mean?

9 A. That means they -- they got the okay from MS-13  
10 down there in El Salvador.

11 Q. If you could turn to page six, does Lil Payaso  
12 answer your question about whether they got the okay  
13 from El Salvador to kill Lagrima?

14 A. Yes.

15 Q. What was his answer?

16 A. Yes, that he got the okay from El Salvador.

17 Q. Now, right after that redacted text there, Lil  
18 Payaso says, "That's when we took action." What did you  
19 understand "action" to mean?

20 A. "Action" means that that's when they killed  
21 Lagrima.

22 Q. In the middle of the page, you say, "What  
23 problems did you guys have, man." What does that mean?

24 A. I just -- I was asking him what is the reason  
25 they kill Lagrima, if they have any -- anything, that

1       they think that he was a rat or something. That's what  
2 I was trying to find out.

3       Q. If you could review the rest of that page and  
4 then look up when you're done.

5       A. Okay.

6       Q. You used the word "papers." You said, "Did you  
7 have papers, or what?" What did you mean by that?

8       A. I mean, if they have court papers that  
9 will incriminate Lagrima, that he was snitching or  
10 ratting somebody.

11      Q. What's the significance about asking about court  
12 papers?

13      A. They suspect that you're a rat, and, you need to  
14 prove that you're not by showing if you ever been  
15 arrested.

16      Q. How would it help to show whether you'd ever been  
17 arrested?

18      A. It will show how you got out, or, if you had  
19 attended court, or anything like that.

20      Q. Why does the gang ask for paperwork from arrests  
21 and court?

22      A. Because they know anybody who doesn't have paper  
23 got arrested for anything, they're not going to let them  
24 out. They're going to be in jail. They're going to be  
25 most likely deported.

1 Q. What conclusion do gang members reach if someone  
2 gets released quickly?

3 A. They will -- that will be a red flag. They would  
4 think that he's talking to the police.

5 Q. How --

6 MR. CONTE: Your Honor, may we approach?

7 THE COURT: Yes.

8 (Thereupon, the following side-bar  
9 conference was had:)

10 MR. CONTE: Judge, I apologize. I may -- I  
11 think I might be confused, but, the government is  
12 referring to 8-A. Is that not what -- you gave us last  
13 night was 8-Z.

14 MS. MARTINEZ: We're not doing 8-Z right  
15 now. We're doing 8-A-1.

16 MR. CONTE: The 8-1 is redacted.

17 MS. MARTINEZ: The A-1 is redacted. You may  
18 not have a printed redacted version, but they are  
19 redacted.

20 MR. CONTE: I'm looking at the book that you  
21 gave us.

22 MS. MARTELL: Crystal just gave us exhibits.  
23 They haven't given it to everybody.

24 MR. CONTE: That's why I'm confused.

25 MS. MARTINEZ: You asked for exhibits early

1 before they were final, so we gave you the unredacted  
2 version. And as they were redacted, we gave you  
3 redacted.

4 MR. CONTE: I'm sorry. I haven't received  
5 it.

6 MS. MARTINEZ: As you can see on the screen,  
7 they are redacted and redacted in the juror's.

8 MR. CONTE: I appreciate that. But I'm  
9 looking at my book, and I'm confused as to why I'm  
10 seeing something in my book different on this screen.  
11 And, I'm sorry, I should have it before you start  
12 talking about it.

13 MS. MARTINEZ: We also sent them by e-mail,  
14 SO --

15 MR. CONTE: I got 8-Z by e-mail last night.  
16 That's why I have it here.

17 MS. MARTELL: We never got the redacted  
18 8-A-1 by e-mail.

19 I think this is a good time -- Amy Austin  
20 and myself got them, but I don't think the rest of  
21 counsel got them. So if we can distribute them to them,  
22 I think that would -- might make a difference.

23 MS. AUSTIN: It's confusing.

24 THE COURT: Okay. Well, let's uncomplicate  
25 it. Can we distribute them to everyone? That would be

1       lovely. Thank you.

2            MR. CONTE: Thank you, Your Honor.

3                   (Thereupon, the side-bar conference was  
4 concluded.)

5            THE COURT: Is everyone in accord now? Is  
6 everyone in accord now?

7            MR. CONTE: Court's indulgence.

8            THE COURT: Now is everyone in accord?

9            MR. CONTE: Court's indulgence.

10           THE COURT: We're looking at 8-A-1 right  
11 now.

12           MS. MARTINEZ: Page six.

13           THE COURT: Page six. 8-A-1, page six.  
14 You're with us, Mr. Conte?

15           MR. CONTE: I am, Your Honor.

16           THE COURT: All right. Thank you.

17           You may proceed.

18 BY MS. MARTINEZ:

19           Q. Continuing on this page, from the portion that's  
20 up on the screen, at the bottom of this paragraph,  
21 you -- Lil Payaso says, "They were really suspicious  
22 about this dude." First of all, who is "this dude" in  
23 this context?

24           A. Lagrima.

25           Q. Who was really suspicious about Lagrima?

1 A. All of them, all the PVLS clique.

2 Q. And then -- and the next thing that Lil Payaso  
3 says, he says, "The homie got caught." Who got caught?

4 A. Lagrima.

5 Q. Who caught him?

6 A. The police.

7 Q. He continues, "And they were asking him for the  
8 papers, and he was never willing to give them." Are  
9 these the same kind of papers we were talking about  
10 earlier?

11 A. Yes.

12 Q. What is the significance of Lagrima being  
13 unwilling to give gang members court papers?

14 A. That was -- that was pretty much the sentence to  
15 the gang -- to the clique that he has something to hide,  
16 he has something to hide.

17 Q. If you could continue to page seven. Please  
18 review page seven and look up when you're done.

19 A. Okay.

20 Q. The very top of the page, Lil Payaso says,  
21 "He got caught and they let him out." Who got caught?

22 A. Lagrima.

23 Q. By who?

24 A. The police.

25 Q. And next thing that he says, at the end he says,

1 "He had already screwed Peluca, the homie, you know."

2 What did you understand that to mean?

3 A. He -- that means Lagrima, they think that Lagrima  
4 rat Peluca out for any -- any business that probably  
5 only they -- they know.

6 Q. Do you understand what they thought Lagrima had  
7 ratted out Peluca about?

8 A. About the -- the job business in the 7-Eleven.

9 Q. And then, you ask, "What homie?"

10 A. Lil Payaso says, "Peluca."

11 Q. And you say, "Oh, Peluquín?"

12 A. What is that exchange about?

13 A. It's the using the same -- we're using the same  
14 name, Peluquín, Peluca, Greñas. It means pretty much  
15 the same.

16 Q. Why would you repeat gang member's name in these  
17 recording conversations?

18 A. Just for -- just for pretty much when the handler  
19 knows, he knows who we talking to and who are they.

20 Q. Was that intentional?

21 A. Yes.

22 Q. You then say, "Oh, okay. It's just that you were  
23 locked up, dude. You were locked up, right?"

24 A. What are you asking Lil Payaso there?

25 A. He was locked up. He was locked up -- as far as

1 I know, he was locked up. And I asked him if -- why is  
2 it that he knew, or he knew at that time. But he -- he  
3 just explain when he got out, he start pretty much  
4 saying the same thing that everybody is saying about  
5 Lagrima.

6 Q. Obvious question, but when you say "locked up,"  
7 what do you mean?

8 A. He was in prison.

9 Q. How -- how were you aware that Lil Payaso was in  
10 prison?

11 A. Because, one day I talked to Payaso, and then he  
12 gave the phone to Lil Payaso, from prison.

13 Q. So when you asked Lil Payaso if he was locked up,  
14 how did Lil Payaso respond?

15 A. He say, "Yes."

16 Q. Then he continues, the next response down, and  
17 says, "So, then it was around that time -- around that  
18 time that I got out." What time is he talking about?

19 A. He's talking about when they were rumors and  
20 gossip around that, why Lagrima can be a rat or he's not  
21 a rat.

22 Q. What did you understand him to mean that, it was  
23 around the time that those rumors were going around,  
24 that he got out?

25 A. He got out of the prison during that time that

1           the clique was suspicious about Lagrima.

2           Q. Was that before or after Lagrima was killed?

3           A. No, it was before.

4           Q. Down to the very bottom, the last thing that Lil  
5 Payaso says on this page, he says, "The one who more or  
6 less paid for the mess was that fucker, Peluquín." What  
7 did you understand that to mean?

8           A. The -- the one that pretty much got screwed  
9 because they think that Lagrima was a rat, was -- the  
10 more affected was Peluca, Greñas or Peluquín, from PVLS.  
11 He is the same person.

12           Q. How was Greñas affected?

13           A. Because they think that the police is after  
14 Greñas.

15           Q. Turn now to page eight. Please review that page  
16 and look up when you're done.

17           A. Okay.

18           Q. What is Lil Payaso talking about in this page?

19           A. He's talking about when they get Lagrima killed.

20           Q. Starting at the top in that first paragraph, the  
21 second line, he says, "We would call him when we had  
22 meetings, and the homie -- we would go and the dude  
23 didn't want to show up." What did you understand that  
24 to mean?

25           A. Every time they have meetings, Lagrima didn't

1 show up.

2 Q. Was it okay for a gang member to not show up when  
3 there were gang meetings?

4 A. No.

5 Q. Why not?

6 A. Because, you had to have a big excuse for not to  
7 attend a meeting.

8 Q. What would happen if a gang member didn't attend  
9 meetings and did not have a good excuse?

10 A. They're going to beat you for 13 seconds.

11 Q. What is it called when gang members beat someone  
12 for 13 seconds?

13 A. Well, when they -- they call it *calentón*.

14 Q. What is the purpose of a *calentón* or beating a  
15 gang member for 13 seconds?

16 A. It's pretty much a punishment.

17 Q. Continuing down the page, you say, towards the  
18 middle, right before that big paragraph, "When you gave  
19 him the beating, did the dude not -- not tell you  
20 anything when you beat him up?" What are you referring  
21 to?

22 A. I'm referring to Lagrima said something when --  
23 when they start -- they start killing him.

24 Q. What did Lil Payaso say?

25 A. He was explaining to me about he already got

1       caught couple of times drinking and not following the  
2       rules, and that -- that was pretty much, also, one of  
3       the big factors, that they think that Lagrima was not  
4       following the rules as well.

5       Q. In the middle of that long paragraph from Lil  
6       Payaso, he says, "That dude had a 26." What is a 26?

7       A. A 26 is every -- every punishment is for  
8       13 seconds. So, if you disobey once then they give you  
9       a 13 seconds. If you do something else, that is another  
10      13 seconds. So, and add up to 26.

11      Q. What happens during a 26?

12      A. Lagrima got killed.

13      Q. Right below that, in quotes, it says, "'Why is it  
14      a 26? It should only be a 13'" -- end quote -- "he told  
15      me." Who do you understand Lil Payaso to be quoting  
16      there?

17      A. Lagrima.

18      Q. At the very end of that paragraph, Lil Payaso  
19      says, "So, then we went to the restaurant where we  
20      cooked the chicken. We gave it to him." What do you  
21      understand Lil Payaso to mean by "the restaurant"?

22      A. The restaurant -- it means the place where  
23      Lagrima got killed.

24      Q. What do you understand Lil Payaso to mean by "we  
25      cooked the chicken"?

1 A. That they killed Lagrima.

2 Q. Why do you understand "restaurant" and "cook the  
3 chicken" to be talking about a murder?

4 A. Because that's kind of like code they use. When  
5 you already know what happened at some point, that then  
6 they going to refer just to, like a code. That's, you  
7 know, that's, they use a code, we ate him or we cook  
8 him, that means they kill him.

9 Q. You say we ate him, we cook him, that means we  
10 killed him, was this code used more than just in this  
11 phone call?

12 A. Yes.

13 Q. Was it a code used by more than just Lil Payaso?

14 A. Yes.

15 Q. How is it you're familiar with this code,  
16 these -- these words about cooking and eating and  
17 restaurants referring to murder?

18 A. Because when we're in conversation it come up,  
19 and some of them, instead of use "kill," they say we  
20 eating, we cooking. And, they stay with that code.  
21 And, I knew what -- what they were referring to.

22 Q. Your response to Lil Payaso is, "But, there, he  
23 didn't listen after you gave him the 26? And he -- and  
24 the dude fucked up again." What is it that you're  
25 trying to clarify there.

1       A. I just trying to clarify, after the -- you know,  
2 after he got the punishment, maybe he want to get in  
3 line and follow the rules. But, you know, that wasn't  
4 the -- that wasn't the case. They knew that they were  
5 going to kill him that day.

6       Q. Lil Payaso responds, "No. That -- that was when  
7 we were going to make the food." What do you understand  
8 "make the food" to mean?

9       A. Means that when they were ready to kill Lagrima.

10      Q. Your response at the bottom, "Oh, when -- oh,  
11 the -- the -- oh, that's the time when you eat?" What  
12 were you asking?

13      A. Asking, that's the time when they kill Lagrima.

14      Q. Why were you asking this, this going back and  
15 forth about punishment and murder?

16      A. Because I want to know how -- how they did it and  
17 how -- if they give him the 26 first, or -- and then --  
18 or it wasn't that day. I just trying to find out how it  
19 happen.

20      Q. Why were you trying to find out how it happened?

21      A. To give to -- for the handler, to what happened  
22 to Lagrima.

23      Q. Continue to page nine. Please review that page  
24 and look up when you're done.

25      A. Okay.

1 Q. The first line there from Lil Payaso, he says,  
2 "Uh-huh, that was when we went to eat." What did you  
3 understand him to be confirming?

4 A. Confirming that's the time that they kill  
5 Lagrima.

6 Q. And, he continues and says, "That's the only time  
7 I saw him. That's the only time that -- that I've seen  
8 him." What did you understand that to mean?

9 A. That's the only time he ever met Lagrima, that  
10 day they -- they kill him.

11 Q. Did Lil Payaso tell you whether or not he  
12 participated in killing Lagrima?

13 A. Yes.

14 Q. Did he participate in killing Lagrima?

15 A. Yes.

16 Q. Two-thirds of the way down the page, Lil Payaso  
17 has a slightly longer response. He says, "Nah, yes,  
18 that's why" -- do you see that there?

19 A. Yes.

20 Q. In the middle of that, he says, "Poison knows  
21 about that problem. You know what I mean? It was with  
22 him that -- that we dealt with these people, you know."  
23 What do you understand him to mean when he says that "we  
24 dealt with these people"?

25 A. They get -- they call Poison to get the okay for

1 them to kill someone.

2 Q. Who is Poison?

3 A. Poison is the shot caller from El Salvador, from  
4 PVLS clique.

5 Q. Continuing on to Government's Exhibit 9-A-1.

6 What date was this recording?

7 A. It was January 29, 2014.

8 Q. Who were you talking to in this recording?

9 A. It was me and Lil Payaso from PVLS.

10 Q. Let's go to page two. At the bottom of page two,  
11 the last thing that you say on that page, you say, "That  
12 homie, Llorona, man." Who are you talking about when  
13 you say "that homie, Llorona."

14 A. Can you say that again? Where?

15 Q. Sure. At the bottom of the page, the last thing  
16 that you say on the page, the very last sentence that  
17 you say.

18 A. Okay.

19 Q. And actually, let me ask this first, just so that  
20 we're clear. JR refers to who in this call?

21 A. Junior.

22 Q. And, who does OC refer to?

23 A. Lil Payaso.

24 Q. All right. So the very last thing you say on  
25 this page is -- starts with, "That homie, Llorona." Who

1       is Llorona?"

2       A. Lagrima.

3                   MS. MARTINEZ: And for the record, Llorona  
4       is L-l-o-r-o-n-a.

5       BY MS. MARTINEZ:

6       Q. Why did you call Lagrima, Llorona?

7       A. Because, it's a term that when you -- in Spanish,  
8       means you cry, and, because the same thing, he has the  
9       eye tear and tattoo on his left side or right side. I  
10      can't recall.

11      Q. Why were you talking to Lil Payaso about Lagrima  
12      again, just a few days later?

13      A. Just trying to find out more.

14      Q. After that, you say, "I didn't know that shit,  
15      dude." What are you referring to?

16      A. That -- I asked -- I asked him if he referring to  
17      why Lagrima, they think that he has ratting Peluca and  
18      some other guy. And that's why they -- I told him I  
19      didn't know that.

20      Q. Why were you trying to find out more about  
21      Lagrima's murder?

22      A. If -- just to give it to my handler, and see  
23      if -- if each of the person that I talk to, says the  
24      same thing.

25      Q. Please turn to page three and review that page,

1 and look up when you're done.

2 A. What page?

3 Q. Just one more. There you go. Page three.

4 A. Okay.

5 Q. Starting at the top of the page, the first thing  
6 you say, towards the end of that you say, "Why did these  
7 homies notice that about that homie so late?" What are  
8 you asking Lil Payaso?

9 A. I asking him why is it they find out that Lagrima  
10 was a rat that late, and they didn't find out before.

11 Q. What you mean by "that late"?

12 A. Because, I -- I knew Lagrima by some other guys  
13 that talk about Lagrima, and they never say anything  
14 about him, until I -- I knew these guys that start  
15 saying something about Lagrima.

16 Q. What was your understanding of how long Lagrima  
17 had been a homeboy with PVLS?

18 A. It was a long time.

19 Q. How did Lil Payaso respond to your question?

20 A. He didn't know that. He just knew what the other  
21 gang member, PVLS, had told him that Lagrima have  
22 been -- rat them out at some point.

23 Q. In his response there, that long response, in the  
24 middle he says, "Then the homies, you know what I mean,  
25 started to ask him for the papers, and the homie didn't

1 want to let them go." What did you understand that to  
2 mean?

3 A. He asked Lagrima for paper, because they already  
4 suspect that Lagrima was a rat. And he didn't turn  
5 anything in.

6 Q. Was that consistent with what you heard from  
7 other gang members?

8 A. Yes.

9 Q. Continuing down, more than halfway down the page  
10 to your long response, the last sentence of your long  
11 response, you say, "You should have let the homie talk  
12 so that he could tell you who the other homies were,  
13 man." What are you talking about?

14 A. About when they kill Lagrima.

15 Q. And what do you mean by, "tell you who the other  
16 homies were"?

17 A. If Lagrima knew that if somebody else was talking  
18 to the police.

19 Q. Why did you tell Lil Payaso that they should have  
20 let Lagrima say who else was talking to the police?

21 A. Because at that point, I want to know if there  
22 was any other names, so I can give it to my handler,  
23 also, if by any chance, come up, anything on my name.

24 Q. Why would you want to give your handler names of  
25 someone the gang thought was cooperating or snitching?

1 A. To prevent that they -- they get kill.

2 Q. And you also said you wanted to know if your name  
3 came up?

4 A. Yes.

5 Q. Why did you want to know if your name came up?

6 A. Because there was a lot of some gang members say  
7 they -- they were -- they were not getting along with  
8 me, so, I -- I heard some rumors that they were kind of  
9 be thinking that -- not that I was talking to the police  
10 at some point, but they were not sure.

11 Q. Why would you want to know if the gang members  
12 thought you were talking to the police?

13 A. That way, any -- I mean, I need to be careful and  
14 I need to talk to my handler.

15 Q. Lil Payaso responds, and in his response he has a  
16 quote. He says, "'No, it's not me. I swear that it  
17 isn't me.'" Who do you understand him to be quoting  
18 there?

19 A. Lagrima.

20 Q. What do you understand him to be describing?

21 A. That he was not a rat. It wasn't him.

22 Q. Do you understand at what moment Lil Payaso was  
23 quoting him, when Lagrima said that?

24 A. When they were killing Lagrima.

25 Q. Then he says -- Lil Payaso says, "We just wanted

1 to finish that thing quickly, man." What do you  
2 understand that to mean?

3 A. They just want to kill him and get it over with.

4 Q. The next thing that Lil Payaso says is, "When we  
5 got to thinking about that stuff he was, you know what I  
6 mean, finished already." What did you understand Lil  
7 Payaso to be saying?

8 A. Lagrima was already killed.

9 Q. By when?

10 A. By the time that he was saying that they already  
11 kill Lagrima. They didn't even let him talk.

12 Q. The last thing on the page that Lil Payaso says  
13 is, "He was already frozen stiff." Who was frozen  
14 stiff?

15 A. Lagrima.

16 Q. What does "frozen stiff" mean?

17 A. That he's dead. He's not moving any more.

18 Q. Please turn -- we'll turn on the screen -- to  
19 Government's Exhibit 10-A-1. What is the date of this  
20 recorded conversation?

21 A. March 31st, 2014.

22 Q. And, in this conversation, who were you talking  
23 to?

24 A. I'm talking to Lil Tuner from PVLS.

25 MS. MARTINEZ: Can we leave that up on the

1 screen?

2 BY MS. MARTINEZ:

3 Q. Who else are you talking to?

4 A. Also, I'm talking to homeboy three, from PVLS.

5 MS. MARTINEZ: Your Honor, may we approach?

6 THE COURT: Okay.

7 (Thereupon, the following side-bar  
8 conference was had:)

9 MR. CRAWLEY: Well, Your Honor, we're back  
10 at this point. We're going to move for a mistrial  
11 again, because it clearly says on that document, on the  
12 lead page of Exhibit 10-A, that "DC" is Douglas Duran  
13 Cerritos. Once again, they've identified him, with the  
14 pseudonym.

15 MR. CONTE: Now they said he's homeboy  
16 three.

17 MR. CRAWLEY: So, on three separate  
18 occasions they've identified him with the pseudonym. In  
19 turn, there's an easy connection between that pseudonym  
20 and the actual person.

21 There's no way this jury at this point can  
22 be impartial regarding our client as to Count 4.  
23 Because if he's, one, he's Douglas Duran Cerritos, and  
24 if he's homeboy number three, he's Douglas Duran  
25 Cerritos. And that is at the heart of what our

1 objection was earlier in this case.

2 And I hate to keep touching upon it, but  
3 when you couple that with the earlier statement -- and I  
4 understand the Court and I respect the Court -- but when  
5 you couple that with the Court's reference to him in  
6 Count 4, these jurors have all been taking notes. The  
7 Court instructed them that they could take notes on  
8 these exact transcripts.

9 So, now, the jurors -- and I watched them  
10 carefully when the Court instructed them that they could  
11 grab the transcripts, they did, a lot of them grabbed  
12 them, and a lot of them have been writing in there.

13 So, now we have it three times, where they  
14 referenced our guy as not only the pseudonym, but  
15 they're looking at the actual name.

16 I don't see how we can escape it. It has to  
17 be a mistrial, Your Honor.

18 MS. MARTINEZ: May I respond, Your Honor?

19 THE COURT: Yes.

20 MS. MARTINEZ: Your Honor, we -- we  
21 obviously disagree that there needs to be a mistrial,  
22 but, I will apologize to counsel and apologize to Your  
23 Honor. We have done everything we can to prep these  
24 witnesses. As Your Honor knows, we met with this  
25 witness immediately before he got on the stand.

1                   It's -- I think it is a puzzling and  
2 confusing thing to a lay person, who is not involved in  
3 these court proceedings, about the importance and  
4 significance of making sure -- although we have stressed  
5 this in our prep sessions -- making sure that when they  
6 use pseudonyms, to not link that to the actual person.

7                   I have no idea why this witness just came  
8 out with "homeboy three" in response to seeing Duran  
9 Cerritos's name. It was clearly a mistake, and  
10 certainly not the way he was prepped. We regret being  
11 here, Your Honor.

12                  I feel compelled to say for the record --  
13 and I hope Your Honor takes absolutely no disrespect  
14 from this, because I certainly mean none. And I don't  
15 mean to quibble with any of Your Honor's rulings, but in  
16 order simply to protect the record and make this  
17 position, we, of course, briefed why we believe that  
18 evidence that Duran Cerritos and Lemus Cerna committed a  
19 first murder of Lagrima before committing a second  
20 murder, we briefed why we think that is admissible.

21                  And I'm not asking Your Honor to revisit  
22 that ruling, and I certainly respect that ruling, but I  
23 do think that's relevant. I do think that there is good  
24 case law to support why that would be admissible in a  
25 case like this.

1                   And again, certainly, we're not going to try  
2 to reopen that door, we're not asking Your Honor to  
3 allow us to bring in that evidence.

4                   However, when you look at that case law and  
5 that argument, and that reasoning about why, in other  
6 cases, in other similar cases, uncharged murder evidence  
7 has come in against defendants who are not charged with  
8 that murder, why that has been found to be admissible,  
9 in a gang case, for example, in a racketeering case,  
10 that's direct evidence of racketeering activity and gang  
11 activity, and also admissible for, B, evidence.

12                  There is case law and argument, we think, to  
13 support that letting that evidence in simply mitigates  
14 the harm that's done here, where there is a slip-up like  
15 this.

16                  And again, I'm certainly not asking to  
17 introduce that kind of evidence, simply making that  
18 record, because I do think it mitigates the harm that is  
19 done when we have a slip-up like this.

20                  And, Your Honor, the government will  
21 continue to do everything possible to avoid that. And I  
22 apologize, that it should not have happened just now. I  
23 sincerely apologize.

24                  But, I do think it's a sticky situation,  
25 Your Honor, and, we're trying to get through this with

1 two defendants who have been, various times, charged  
2 with these two murders that we're litigating, and  
3 they're sitting in court here.

4 So, Your Honor, we -- we disagree that a  
5 mistrial is warranted. We oppose that motion, and, we  
6 submit that we should be able to move forward with this  
7 witness.

8 I also note that I think -- someone should  
9 correct me if I'm wrong -- I think this is the first  
10 time that "homeboy three" has been used. I don't know  
11 if we want to consider changing the pseudonyms once  
12 again. I know we did that already. That could invite  
13 other confusion. But I don't think there's any  
14 testimony on the record yet about homeboy three.

15 MR. CRAWLEY: Your Honor, in order to give  
16 weight -- in order to give weight to Your Honor's  
17 rulings, they have to be enforced. They have to be.

18 We -- my co-counsel and I made it a strong,  
19 strong statement to the government. We asked for a  
20 recess. The Court granted the recess because we feared  
21 that something like this would happen.

22 This is on the record. The government stood  
23 up. They acknowledged that this was a concern. They  
24 briefed this individual for at least 20 minutes prior to  
25 coming back out here.

1           There is nothing else we could have done to  
2 prevent this. We asked specifically, he is charged in  
3 only one count. He has been hit by "homeboy number  
4 one," "homeboy number three," and, with all due respect,  
5 Your Honor's reference to Count 4.

6           Now, in particular, Exhibit 10-A, this is  
7 where it gets to be extremely troubling. 10-A deals  
8 with the count that he is actually charged with. There  
9 is no reason he should not have mentioned him by his  
10 name. That is his charge. That phone call occurred.

11           THE COURT: I'm sorry. Go back. What  
12 you're saying, this 10-A, is what?

13           MR. CRAWLEY: Is March 31st, it references  
14 the incident that occurred in Count 6.

15           THE COURT: Okay.

16           MR. CRAWLEY: That alleged murder occurred  
17 on March 29th, of Mr. Guasón. If you refer to him as  
18 homeboy number three, when you should have just referred  
19 to him as Douglas Duran Cerritos or Lil Poison, it has  
20 totally confused the jury. Why aren't you referencing  
21 him in a count that speaks to him?

22           Now -- now, if you go back and think about  
23 Count 4, the count that he's supposed to be -- the count  
24 that we're not going to prejudice this jury with, he is  
25 identified under the pseudonym, as the person that the

1 Court has referred to him as homeboy number three, for  
2 Count 4 purposes.

3 So, they've identified him on two separate  
4 occasions as a pseudonym. So, anytime you bring -- the  
5 government, and I think rightfully so, asked the Court  
6 maybe to use the word "others." But the Court rejected  
7 that, with all due respect.

8 Now --

9 MR. AMOLSCH: That was my suggestion.

10 MR. CRAWLEY: Okay. Let's give Mr. Amolsch  
11 his credit.

12 The point being, the point being --

13 THE COURT: Just a second.

14 I'll send the jury out.

15 (Thereupon, the side-bar conference was  
16 concluded.)

17 THE COURT: Ladies and gentlemen, why don't  
18 you put your notes under the chair. We will recess for  
19 the evening.

20 Please do not discuss the case. Don't  
21 permit the case to be discussed in your presence. Don't  
22 do any research on the case. And we'll resume tomorrow  
23 morning at 10:00 o'clock. Thank you.

24 (Jury excused at 5:02 p.m.)

25 THE COURT: You may be seated.

1                   MR. CRAWLEY: You're going to excuse the  
2 witness, Your Honor?

3                   THE COURT: Yes, sir.

4                   Can you hear me okay?

5                   THE WITNESS: Yes.

6                   THE COURT: Please don't discuss your  
7 testimony with anyone. We need you to come back  
8 tomorrow at 10:00 o'clock. Okay?

9                   THE WITNESS: Yes.

10                  (Thereupon, the witness withdrew from the  
11 stand.)

12                  THE COURT: Mr. Crawley, you said there were  
13 three times, including -- four times, including my  
14 statement at the beginning of the trial. Is that right?

15                  MR. CRAWLEY: I think three times total,  
16 Your Honor.

17                  THE COURT: Three times total. And this  
18 last time, tell me exactly what this time was.

19                  MR. CRAWLEY: Okay. So, as the Court -- and  
20 does the Court have a copy of the transcript book?

21                  THE COURT: I do.

22                  MR. CRAWLEY: That may help the Court.

23                  The exhibit that the government was  
24 referencing --

25                  THE COURT: 10-A-1.

1                   MR. CRAWLEY: -- 10-A-1, as the Court can  
2 see, the lead-in sheet -- I refer to it as the lead  
3 sheet, but --

4                   THE COURT: Right.

5                   MR. CRAWLEY: -- Your Honor may refer to it  
6 as something else -- that document has on its cover, on  
7 its face, the speakers.

8                   THE COURT: Right.

9                   MR. CRAWLEY: Where "verbatim" has been  
10 removed and it says "translation," and then below  
11 "translation," the Court will note that there are  
12 several speakers, one being Junior, I believe -- and I  
13 don't have it in front of me -- but one being Junior,  
14 one being Mr. Gaitan Benitez, and one being my client,  
15 Mr. Douglas Duran Cerritos. I think all three of those  
16 names appear on the lead sheet --

17                  THE COURT: Yes.

18                  MR. CRAWLEY: -- if my memory is correct.

19                  So, as the Court is aware -- thank you.

20                  As the Court is aware, prior to this witness  
21 being brought out for his testimony, we asked the Court  
22 for the Court's indulgence to speak with the government,  
23 because we were concerned that this witness, on the  
24 witness stand, would make the mistake of referring to  
25 our client as the pseudonym, homeboy number three, in

1 reference to certain charges in this case that would  
2 confuse the jury based on what we believe to be two  
3 prior incidents in which, in one case, the Court spoke  
4 about my client being involved in Count 4, and then  
5 corrected itself by saying -- and these were the Court's  
6 words -- that he is no longer charged in Count 4, which  
7 was troubling to us because that gives the jury the, I  
8 guess, the assumption that he may have been at some  
9 point charged.

10 The Court said that it would -- or it felt  
11 that it had dealt with it by explaining to the jury that  
12 the defendant was no longer charged in that count, and  
13 that it would instruct the jury that it's not to  
14 consider that count.

15 So, during the trial as the government  
16 called other witnesses, at least one other witness, that  
17 witness, in discussing the attempted murder of what I  
18 would call alleged victim Peligroso, the witness  
19 indicated that homeboy number one, in reference to my  
20 client, was involved.

21 This was another example where the lead-in  
22 sheet had my client's name, Douglas Duran Cerritos. We  
23 objected and moved for a mistrial at that time as well.

24 The Court attempted to remedy that mistake  
25 by indicating to us that we would change the pseudonym.

1 If "homeboy number one" has been used, we're going to  
2 now refer to Mr. Cerritos at a later date, or when  
3 another witness appears -- we're going to refer to him,  
4 as it relates to Count 4, as "homeboy number three."

5 So, today, a few minutes ago, the government  
6 called this witness, reconvened, and we dealt with  
7 Exhibit 10-A.

8 Exhibit 10-A -- and the government can  
9 correct me if I'm wrong, but I believe I'm correct --  
10 Exhibit 10-A concerns a telephone call that occurred on  
11 March 31st, 2014.

12 At that heart -- at the heart of that call,  
13 what I expect the testimony will be, is that my client  
14 made certain statements regarding Count 6 and the murder  
15 of Mr. Guasón. And I'm sorry, I apologize, I think his  
16 last name is Mr. Martinez, but once again I'm not  
17 looking --

18 THE COURT: Right.

19 MR. CRAWLEY: -- at my notes.

20 THE COURT: Guasón Martinez.

21 MR. CRAWLEY: Yes.

22 So, in reference to that particular call,  
23 they're referring to my client not by his name in a  
24 count for which he is charged; they're referring to him  
25 as homeboy number three, once again adding to the

1 confusion of the jury.

2           Because now the jury is looking at this  
3 sheet and, as I indicated, the Court had given them  
4 permission to take notes. And as they see the sheet,  
5 they're wondering: Okay, we see these names. He's  
6 identified the speaker. Who now is this homeboy number  
7 three? Because we have these individuals listed here.

8           So, once again, if you take into  
9 consideration that, as Mr. Zimmerman has touched upon,  
10 the ability to cross-examine, and basically, through  
11 commonsense reasoning, ask, "Well, is homeboy number one  
12 my client, is homeboy number two my client, is homeboy  
13 number three my client," you're left with only two  
14 possible individuals. You're left with, Mr. Cerna and  
15 Mr. Duran Cerritos.

16           With my client having been, for our  
17 purposes -- and I know the Court may not agree -- but  
18 for our purposes identified on two occasions as homeboy  
19 number one and now homeboy number three, it doesn't take  
20 a rocket scientist to realize that's who they're talking  
21 about (indicating). And I'm pointing to my client.  
22 That's who they're talking about in Count 4.

23           Because, Count 4 is the highly prejudicial  
24 charge that the Court said it would limit the  
25 government's ability to reference our client's names,

1       Mr. Cerna and myself -- and Mr. Cerritos.

2                   So, by -- by limiting the government's  
3                   ability to call them by their name, the Court placed on  
4                   the government the burden -- and let me say it this way:  
5                   The Court basically ruled in favor of Mr. Amolsch and  
6                   Mr. Salvato, but it was the government who suggested  
7                   this remedy.

8                   The government is the one that suggested,  
9                   before a decision was even made regarding my client,  
10                  that if the Court of Appeals ruled in our favor, or if  
11                  Your Honor ruled in our favor, that their remedy was to  
12                  refer to these two individuals as homeboy number one and  
13                  homeboy number two.

14                  And I have a lot of respect for  
15                  Ms. Martinez, but, although she may think that, well,  
16                  the Court erroneously made that decision, it was her  
17                  suggestion to the Court that the Court adopt it.

18                  And it was our fear -- and I think  
19                  Mr. Amolsch and Mr. Salvato supported me in this -- it  
20                  was our fear that this would ultimately lead us back to  
21                  this predicament. And it has. But it has despite every  
22                  attempt by the defense to avoid it.

23                  When have you seen a defense attorney stop a  
24                  case, ask for a recess to remind the government to ask  
25                  its witness to not refer to our client by this pseudonym

1       in matters that -- that the Court has said are relevant  
2       and the pseudonym should not be applied?

3                     And their witness still did it.

4                     So, I don't see how we can pull back what  
5       has already been done. We cannot close this door. It  
6       has been opened. And it wasn't opened by us. It wasn't  
7       opened by any of these defendants or their attorneys.  
8       It was opened by the government and the government's  
9       witness.

10                  THE COURT: All right.

11                  MR. CRAWLEY: And for those reasons we ask  
12       for the mistrial.

13                  Thank you.

14                  THE COURT: All right.

15                  Mr. Amolsch is standing up. I'm not sure if  
16       he's coming to the podium or not.

17                  MR. AMOLSCH: I am, Your Honor.

18                  THE COURT: All right.

19                  MR. AMOLSCH: I would just add that, what  
20       Mr. Crawley jus said, that this witness again -- just  
21       kind of piggybacking what we've talked about, is, when  
22       they were talking about the PVLS -- PVLS clique, he  
23       said, three different times, the whole clique knew they  
24       were going to kill Lagrima, when they killed Lagrima,  
25       and how they did it, again referring to the entire

1 clique as a whole, meaning PVLS, which that -- which  
2 includes everybody that the government has identified as  
3 being in that clique.

4 THE COURT: All right.

5 MS. MARTINEZ: Your Honor, as I stated up at  
6 the bench conference, first of all, we have tried hard  
7 with our witnesses to prep them to use the pseudonyms  
8 appropriately, consistent with the suggestions made by  
9 the parties and Your Honor's ruling.

10 And I apologize to the Court, I apologize to  
11 the defense counsel, that this witness misused the  
12 pseudonym. That's -- that was a mistake. There is no  
13 reason for him to use the pseudonym under these  
14 circumstances with this transcript.

15 And certainly, there was no reason for him  
16 to use the pseudonym when he's looking right at the name  
17 that we're trying to redact, essentially, with the use  
18 of the pseudonym.

19 As Mr. Crawley rightly observed, this  
20 particular transcript has -- has to do with the second  
21 murder, the murder which his client is charged with.  
22 Why it came into this -- this witness's mind at that  
23 moment, I'm not sure.

24 I can submit to the Court that I think  
25 perhaps it is difficult for a lay person, such as this

1 witness and perhaps others, to understand the  
2 significance and the importance, despite the  
3 government's best ability to prep them and to explain  
4 the significance and explain how important it is to  
5 follow those instructions.

6 And so, we apologize that there is a slip-up  
7 here. We acknowledge that there was a slip-up. That's  
8 exactly why I asked to approach.

9 Your Honor, we -- there has been a motion  
10 for a mistrial. We obviously disagree with that. We  
11 oppose the motion for a mistrial. We don't think it's  
12 warranted here.

13 We think that the prejudice that's been  
14 caused to -- to Mr. Crawley's client, and to the jury  
15 having heard that and potentially having also seen the  
16 name at the same time -- we can't know what they were  
17 looking at or what they saw before we took it off of the  
18 screen -- but we think the prejudice is minimal, for a  
19 number of reasons.

20 And, Your Honor, as I stated at the bench,  
21 I'm making these arguments about the prejudice caused by  
22 this mistake here. I'm not asking Your Honor to -- to  
23 revisit any rulings, and I'm certainly not arguing with  
24 Your Honor about Your Honor's rulings. I have great  
25 respect for the Court and for the Court's rulings.

1           However, I will state that, as we briefed  
2 extensively with the Court during motions practice,  
3 there is significant case law which we do believe  
4 supports the admissibility of evidence of an uncharged  
5 murder in a case such as this, evidence -- that it is  
6 both direct evidence of racketeering activity, of the  
7 racketeering enterprise, of the defendant's knowledge of  
8 the enterprise, of their involvement in the enterprise,  
9 things that the government must prove directly; and,  
10 also, that it is admissible 404(b) evidence, for all of  
11 the reasons that we stated in our pleadings.

12           Now, we're not trying to reopen that door.  
13 We're not attempting to affirmatively bring in that kind  
14 of evidence. But I do think that that case  
15 law and that argument warrants consideration under the  
16 circumstances, given that other courts and the Fourth  
17 Circuit has countenanced evidence of uncharged murders  
18 coming in against defendants who are at trial for other  
19 crimes.

20           I think that that shows that that level of  
21 prejudice in a case like this, where the defendant --  
22 where Mr. Crawley's client, Duran Cerritos, is charged  
23 with a brutal murder, where the -- where the jury will  
24 hear all of these details, these gory details, about the  
25 murder with which he is charged.

1           We think that a slip-up, a reference that  
2 perhaps the jury would infer to understand that he knew  
3 about another murder, or even if -- even if the jury  
4 understood it to mean that he was involved in another  
5 murder, we think that that prejudice is extremely  
6 small --

7           THE COURT: All right.

8           MS. MARTINEZ: -- such that it does not  
9 warrant a mistrial.

10          THE COURT: Thank you.

11          MS. MARTINEZ: Thank you, Your Honor.

12          THE COURT: All right. I'll take the matter  
13 under advisement. We'll resume tomorrow at 9:30. Thank  
14 you.

15          (Proceedings concluded at 5:16 p.m.)

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## CERTIFICATE OF REPORTER

I, Renecia Wilson, an official court reporter for the United States District Court of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the jury trial in the case of UNITED STATES OF AMERICA v. JOSE LOPEZ TORRES, et al.

I further certify that I was authorized and did report by stenotype the proceedings in said jury trial, and that the foregoing pages, numbered 1 to 258, inclusive, constitute the official transcript of said proceedings as taken from my shorthand notes.

IN WITNESS WHEREOF, I have hereto  
subscribed my name this 12th day of May, 2016.

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/s/ Renecia Wilson, RMR, CRR  
Official Court Reporter